

DEPOSITION OF JAMES SARGENT

PAGE 1 SHEET 1

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF VERMONT  
3 WILLIAM G. ROCKWOOD  
4 d/b/a KERRY'S KWIK STOP  
5 and DAVID M. ROCKWOOD  
6 d/b/a OLD NORTH END VARIETY  
7  
8 -VS- ) DKT NO. 2:88-CV-223  
9 CITY OF BURLINGTON )  
10  
11 DEPOSITION  
12 OF  
13 JAMES SARGENT  
14 Taken on July 13, 1998  
15 at the offices of  
16 Dartmouth-Hitchcock Medical Center  
17 One Medical Center Drive  
18 Lebanon, NH 03756-0001  
19  
20 APPEARANCES:  
21 FOR THE PLAINTIFF: AMY SYLVESTER, ESQ.  
22 MICHAEL BROW, ESQ.  
23 Sylvester & Maley  
24 78 Pine Street, P.O. Box 1053  
25 Burlington, VT 05402-1053  
26  
27 FOR THE DEFENDANT: JOHN D. LEDDY, ESQ.  
28 McNell, Leddy & Sheahan  
29 271 South Union Street  
30 Burlington, VT 05401-4513  
31  
32 JESSICA OSKI, ESQ.  
33 City of Burlington Attorney's Office  
34 149 Church Street  
35 Burlington, VT 05401  
36  
37 COURT REPORTER: Kenneth McGuire, RMR  
38 117 Bank Street  
39 Burlington, Vermont 05401

PAGE 3

1 EXHIBITS (Continued) Page  
2 17. Photograph of Old North End Variety 128  
3 18. Photograph of Old North End Variety 128  
4 18. Photograph of Old North End Variety 128  
5 20. "Archives of Diseases of Pediatrics and Adolescent Medicine," April 1986 148  
6  
7 21. Dr. Sargent's letter to "Archives of Diseases of Pediatrics and Adolescent Medicine" 150  
8  
9 22. April 1998 "Archives of Pediatrics," "Cognitive Susceptibility to Smoking and Initiation of Smoking During Childhood, a Longitudinal Study," by Christine Jackson 152  
10  
11 23. Article by Christine Jackson from Preventive Medicine, 1998 153  
12  
13  
14 STIPULATION  
15 It is hereby stipulated and agreed by and between the attorneys of record as follows:  
16  
17 THAT the testimony of JAMES SARGENT may be taken and treated as if taken pursuant to notice and order to take deposition, and that all formalities of notice and order are waived by the parties, and the signatures to this stipulation are in like manner waived.  
18  
19 THAT all objections except as to matters of form are reserved until the deposition, or any part thereof, is offered in evidence.  
20  
21 THAT the deposition may be signed by the said JAMES SARGENT before any notary public.  
22  
23 THAT all exhibits offered for identification may be retained by counsel until the time of trial.  
24  
25

PAGE 2

1 INDEX  
2 JAMES SARGENT, July 13, 1998  
3 EXHIBITS Page  
4 1. Dr. Sargent's Curriculum Vitae 9  
5 2. Dr. Sargent's Expert Disclosure 21  
6 3. "Tobacco Industry Promotion of Cigarettes and Adolescent Smoking" 41  
7 4. Photograph of Kerry's Kwik Stop 51  
8 5. Photograph of Kerry's Kwik Stop 51  
9 6. Photograph of Kerry's Kwik Stop 51  
10 7. Photograph of Kerry's Kwik Stop 51  
11 8. Photograph of Kerry's Kwik Stop 51  
12 9. "Camel Cash, Timeless Collectibles, 1913-1998" 53  
13  
14 10. Document titled "General Pediatrics & Preventive Pediatrics," dated "Early Initiation of Tobacco Use Among Rural School Children," by James D. Sargent, et al. 69  
15  
16 11. "Influence of Education and Advertising on the Uptake of Smoking by Children," Bruce K. Armstrong, et al. 70  
17  
18 12. Dr. Sargent's hand-drawn diagram 88  
19  
20 13. "Smoking Initiation by Adolescent Girls, 1944 through 1988," by John Pierce, et al. 123  
21  
22 14. "A Historical Analysis of Tobacco Marketing and the Uptake of Smoking by Youth in the United States, 1800-1977," by Pierce, et al. 126  
23  
24 15. Photograph of Old North End Variety 126  
25 16. Photograph of Old North End Variety 126

PAGE 4

1 JULY 13, 1998; 8:30 A.M.  
2 JAMES SARGENT  
3 having been sworn to tell the truth, deposes  
4 and says as follows:  
5 EXAMINATION BY MR. BROW, ESQ.:  
6 Q. Would you state your name, please?  
7 A. James Sargent.  
8 Q. What is your address? Work address would be fine.  
9 A. Work address is Pediatric and Adolescent Medicine,  
10 Dartmouth-Hitchcock Medical Center.  
11 Q. You are employed at Dartmouth-Hitchcock Medical  
12 Center?  
13 A. Yes.  
14 Q. How long have you been employed here?  
15 A. Since '89.  
16 Q. Have you reviewed anything in preparation for this  
17 deposition?  
18 A. I have reviewed my files, my research files, that  
19 have papers in them, scientific articles,  
20 Q. Now, when you say your "research files," would  
21 those be for the research that you did yourself, or  
22 does it include --  
23 A. It includes research by other scientists.  
24 Q. Where is that located, the file?  
25 A. It's a series of files, in the filing cabinet

2065019961

PAGE 5 SHEET 2

5

- 1 here.
- 2 Q. How voluminous is it?
- 3 A. Pretty.
- 4 Q. More than six inches thick?
- 5 A. Between six and twelve.
- 6 Q. And what is contained in those files is your
- 7 information from your studies, right?
- 8 A. About this much (indicating), because it is the
- 9 research paper, the published paper.
- 10 Q. So what is in your file is your published paper?
- 11 A. Right, plus the published papers of others.
- 12 Q. How many other published papers from other people
- 13 would you estimate there are?
- 14 A. 30, 40. Something like that.
- 15 Q. Is there anything else in the research files that
- 16 you reviewed?
- 17 A. No.
- 18 Q. Of those 30 or 40 --
- 19 A. Actually, there are some policy papers written in
- 20 medical journals, which I wouldn't consider -- I
- 21 wouldn't term them "research papers." They are papers
- 22 written by people about tobacco policy.
- 23 Q. Did you rely on any of those policy papers --
- 24 A. No.
- 25 Q. -- in formulating your opinions in this matter?

PAGE 7

7

- 1 referring to one of the articles attached to Andy
- 2 Montroll's affidavit.
- 3 MS. OSKI: By Donald Garner.
- 4 Q. Is there anything else in that file other than the
- 5 studies and the policy papers?
- 6 A. No.
- 7 Q. Of the studies, are there any particular ones that
- 8 you relied upon in connection with this case?
- 9 A. They're all important. I think the most important
- 10 article is probably the one by John Pierce that
- 11 appeared in the Journal of the American Medical
- 12 Association in February 28th, I believe.
- 13 Q. '98?
- 14 A. Yeah.
- 15 Q. Did you review all 30 -- did you say there were 30
- 16 or 40 --
- 17 A. Yes.
- 18 Q. -- studies?
- 19 A. Yes.
- 20 Did I review them all?
- 21 Q. Yes.
- 22 A. No.
- 23 Q. Any others that you remember reviewing in
- 24 connection with this case?
- 25 A. There's a -- the Pierce article is the second of

PAGE 6

6

- 1 A. Depends on what opinion you are talking about.
- 2 Q. Okay. Well, you relied on some of them for
- 3 certain things in connection with this case?
- 4 A. If the question is, did I rely on them to form an
- 5 opinion about the association between cigarette
- 6 advertising and promotion, and smoking in children, the
- 7 answer is no.
- 8 Q. What did you rely on them for?
- 9 A. They address everything from the Food and Drug
- 10 Administration regulations -- there are articles by
- 11 Dr. Kessler about those regulations, to attorneys or
- 12 law professors talking about those regulations, and I
- 13 didn't review these specifically for this deposition.
- 14 But they are in those folders.
- 15 The one policy paper that I reviewed is contained
- 16 in the affidavit -- is it an affidavit? The City of
- 17 Burlington cites three articles.
- 18 MS. OSKI: Right.
- 19 A. And the third article is a policy paper that
- 20 relates specifically to policies around storefront and
- 21 billboard advertising.
- 22 Q. Do you remember who put that policy paper out?
- 23 A. No.
- 24 THE WITNESS: Do you have the --
- 25 MR. LEDDY: I think the Doctor is

PAGE 8

8

- 1 the three articles in that affidavit. The third one, I
- 2 also reviewed.
- 3 Q. Would that be the Jackson article, Christina
- 4 Jackson?
- 5 A. No.
- 6 Who does that article? I'm terrible with names.
- 7 If you show me the affidavit --
- 8 Q. It may not be on that page. I was just getting
- 9 the expert disclosure cover page out of your way.
- 10 A. This one.
- 11 Q. That would be contained in footnote 3, Schooler,
- 12 Felghery and Flora that appeared in the American
- 13 Journal of Public Health? Is that the one you are
- 14 referring to?
- 15 A. Yes.
- 16 Q. Did you review anything else in preparation for
- 17 this deposition?
- 18 A. Besides the research articles?
- 19 Q. Yes.
- 20 A. No.
- 21 Q. Did you talk to anyone other than Mr. Laddy or
- 22 Miss Oski?
- 23 A. No.
- 24 Q. Have you testified before in any cases involving
- 25 tobacco?

2065019962

PAGE 9 SHEET 3

9

- 1 A. No.  
2 Q. Have you ever testified before any committees or  
3 governmental bodies with regard to tobacco issues?  
4 A. I'm trying to remember if I've testified before  
5 the New Hampshire legislature. And I think not.  
6 Q. Have you ever testified before in any case or  
7 before any governmental body with respect to any sort  
8 of advertising issues?  
9 A. No.  
10 (Deposition Exhibit 1, Dr. Sargent's curriculum  
11 vitae, was marked)  
12 Q. Dr. Sargent, I am going to show you what has been  
13 marked as Deposition Exhibit 1. Is that your CV?  
14 A. Yes.  
15 Q. Does that accurately reflect your credentials?  
16 A. Yes.  
17 Q. And does it accurately reflect the studies that  
18 you performed?  
19 A. Yes.  
20 Q. Is there anything not on there that you would  
21 consider to be germane in some way to this case, any  
22 sort of experience or literature that you have written,  
23 articles that you have written?  
24 A. No.  
25 Q. Do you have any experience of any kind with

PAGE 11

11

- 1 ever dealt with advertising, other than sort of as a  
2 consumer?  
3 A. Well, in my clinical experience, I deal with  
4 advertising, in that I try, in the clinical setting, to  
5 talk to children about advertising. And I've worked,  
6 in my professional capacity as a researcher, on a  
7 school-based tobacco control intervention in Vermont  
8 with elementary, junior high, and high school children,  
9 to try to teach them about the mass marketing,  
10 specifically, of tobacco.  
11 Q. Do you have any texts that you refer to in  
12 connection with that?  
13 A. No.  
14 Q. You just -- they're kids, so you just talk to  
15 them?  
16 A. What we do is, we try to we teach medical students  
17 how to talk to them. So we talk to medical students  
18 about how children behave, what kinds of attitudes they  
19 form with respect to tobacco prior to starting to use  
20 tobacco, and how advertising relates to this development  
21 of those attitudes. And in teaching them that, we try  
22 to teach them to teach children about that process, the  
23 idea being that, as children know more about that  
24 process, they may be more resistant to the advertising  
25 they see in their everyday lives.

PAGE 10

10

- 1 advertising?  
2 Do you want me to be more specific?  
3 A. Yes.  
4 Q. Have you ever taken any classes in advertising?  
5 A. No.  
6 Q. Have you ever taken any classes in consumer  
7 behavior?  
8 A. No.  
9 Q. How about mass communication?  
10 A. No.  
11 Q. I assume you took some psychology courses in  
12 college?  
13 (Witness nodded).  
14 Q. You have to say yes.  
15 A. Yes, I'm sorry.  
16 Q. Did you take anything other than the ordinary sort  
17 of college-level psychology course?  
18 A. You mean as an undergraduate?  
19 Q. Or graduate.  
20 A. Well, I mean, my work experience involves child  
21 behavior and development, so, as a result of my work  
22 experience and the research that I've done looking at  
23 the behavior of children, I'm an expert on why children  
24 behave the way they do.  
25 Q. In connection with your work experience, have you

PAGE 12

12

- 1 Q. Could you summarize for me the kinds of  
2 discussions you have with children about advertising?  
3 A. We'll ask children to -- we'll ask young,  
4 elementary school age children to draw Joe Camel, and  
5 they'll draw a picture of Joe Camel, and, usually,  
6 something else associated with that picture, and we'll  
7 try to teach them that Joe Camel is not just an image  
8 but it is also a means of associating tobacco with  
9 something positive, something else, a beautiful woman,  
10 a hip situation.  
11 Q. So the kids will draw -- when you ask them to draw  
12 Joe Camel, they will draw Joe Camel and a beautiful  
13 woman?  
14 A. Yes. And you can use that drawing to teach them  
15 about that association, about how the advertising is  
16 teaching them an association.  
17 Q. Now, you said that you had also talked to kids or  
18 done a study on tobacco control intervention. Is that  
19 one of your published studies?  
20 A. It's not published yet. We've just finished the  
21 second year in the field, and we just finished the  
22 third survey. So we are analyzing the data from that  
23 and we were getting the data entered and analyzed.  
24 Q. Are you relying on that in any specific way in  
25 connection with this case, that study?

2065019963

PAGE 13, SHEET 4

13

- 1 A. I'm not relying on that data. I'm relying on my  
2 experience working with those children.  
3 Q. What does that Tobacco Control Intervention  
4 Program involve?  
5 A. It involves a program that is similar to Odyssey  
6 of the Mind. Have you ever heard of that?  
7 Q. Yes.  
8 A. In Odyssey of the Mind, what they attempt to get  
9 children to do is to create their own solutions to  
10 problems. So it's an attempt to take that approach to  
11 tobacco control in children, to try to encourage  
12 children to think about why they and other children  
13 begin to use tobacco, and to try to encourage them to  
14 solve the problem themselves, by creating antitobacco  
15 programs within their schools and communities.  
16 Q. So what you are doing is, you are asking the kids  
17 to create programs?  
18 A. Yes.  
19 Q. I assume you are doing that under some grant  
20 program?  
21 A. It's funded by the National Cancer Institute.  
22 Q. In connection with that program, do you have any  
23 sort of questions that you ask the kids?  
24 A. There's a survey that we ask the kids at baseline,  
25 at the beginning, in the middle of the program, and at

PAGE 15

15

- 1 insight into that.  
2 Q. I understand.  
3 A. No, it doesn't.  
4 Q. Okay. You said that this survey you had done, you  
5 were in the second year?  
6 A. Yes.  
7 Q. Have the results of the first year been compiled  
8 in any fashion?  
9 A. Yes.  
10 Q. Are there any conclusions that are drawn from that  
11 information that has been assembled to date?  
12 A. Yes.  
13 Q. Are those published anywhere?  
14 A. In abstract form.  
15 Q. Would you have copies of those abstracts?  
16 A. I do.  
17 Q. Maybe, at the break, we could see if you can get  
18 them.  
19 A. The abstract shows that children in rural Vermont  
20 begin smoking as early as first grade.  
21 MR. LEDDY: Off the record.  
22 (Discussion off the record)  
23 A. It is during a phase of their development where  
24 they still often believe in Santa Claus.  
25 Q. What percentage actually begin in first grade, of

PAGE 14

14

- 1 the end of the program. So there is a real  
2 questionnaire.  
3 Q. How long is the survey?  
4 A. It's about a hundred questions.  
5 Q. Do any of those questions ask the children if  
6 they've started to smoke?  
7 A. Yes.  
8 Q. And do any of them ask the reason why they have  
9 started to smoke?  
10 A. Children - if you ask children why they started  
11 to smoke, they don't have insight into that process.  
12 What you have to do is ask them other questions that  
13 are separate from the question, "Do you smoke?" So you  
14 ask them, if they have friends that smoke, to see if  
15 they've been exposed to that environmental factor. You  
16 ask them if they have parents that smoke, to see if  
17 they've been exposed to that environmental factor. You  
18 ask them if they own a cigarette promotional item, to  
19 show whether or not they have been exposed to that  
20 environmental factor. And then you use statistical  
21 analysis to link the different environmental exposures  
22 to those - to the actual smoking outcome.  
23 Q. So is the answer to my question, No, it doesn't  
24 ask them why they started to smoke, directly?  
25 A. You can't ask them that. I mean, they don't have

PAGE 16

16

- 1 Vermont students, do you know?  
2 A. That is, first grade is the very beginning - for  
3 boys, kindergarten, for girls, first grade. By fourth  
4 grade - of the smokers in fifth through twelfth grade,  
5 by fourth grade, about - I think it is about 30  
6 percent of them had already started.  
7 Q. When you say "started," you mean smoked regularly?  
8 A. Smoked their first cigarette.  
9 Q. So they have experimented on at least one  
10 occasion?  
11 (Witness nodded).  
12 Q. Yes?  
13 A. Yes.  
14 Q. Let me get back to sort of where we began, on the  
15 advertising. How much of your time is spent in your  
16 clinical practice, if you take your workdays as a  
17 whole?  
18 A. About 30 percent.  
19 Q. And is the remainder spent on these studies and  
20 various proposals that you are working on?  
21 A. I'd say 50 to 60 percent. About 10 percent is  
22 spent on teaching, teaching medical students and  
23 residents.  
24 Q. Do you do research in anything other than  
25 tobacco-related issues?

2065019964

PAGE 17 SHEET 5

17

- 1 A. Yes.
- 2 Q. What else do you do research on?
- 3 A. The epidemiology of lead poisoning in children.
- 4 how children get lead poisoned and how to prevent that.
- 5 Q. Is that still ongoing?
- 6 A. Yes.
- 7 And I act as a mentor to other people who are
- 8 engaging in research, and they look at a variety of
- 9 topics that are pediatric topics.
- 10 Q. How much of your time is spent on lead poisoning
- 11 issues?
- 12 A. At this point in time, very little. Maybe 5
- 13 percent.
- 14 Q. You said you spent roughly 10 percent of your time
- 15 teaching. Does that include the time that you spend
- 16 mentoring other people, or is that separate?
- 17 A. That is within the 60 percent of research that I
- 18 do. When I say 10 percent teaching, I refer to
- 19 clinical teaching, teaching people how to be doctors.
- 20 Q. Med students?
- 21 A. Correct.
- 22 Q. Do you subscribe to any advertising periodicals of
- 23 any kind?
- 24 A. No.
- 25 Q. Do you belong to any advertising associations of

PAGE 18

18

- 1 Q. Do you mean like an ad, or do you mean --
- 2 A. I mean an ad, yes.
- 3 Q. Then would they describe what is effective about
- 4 the ad or what is not? Is that what would happen?
- 5 A. Yes.
- 6 Q. Who among your staff has attended those seminars?
- 7 A. Our educator.
- 8 Q. Who is that?
- 9 A. Amy Bernhardt.
- 10 Q. Do you have any idea roughly how many she has
- 11 attended?
- 12 A. One.
- 13 Q. Do you know which one that was?
- 14 A. The Advertising to Children Conference, in Los
- 15 Angeles, this year.
- 16 Q. Do you remember when this year?
- 17 A. It was in March, I think.
- 18 Q. Did she indicate whether there was any discussion
- 19 about tobacco advertising at that conference --
- 20 A. She --
- 21 Q. -- other than by her?
- 22 A. She had a badge on that said Norse Cotton Cancer
- 23 Center, and she indicated that certain people avoided
- 24 her like the plague.
- 25 Q. But, other than that, was there any discussion of

PAGE 19

19

- 1 any kind?
- 2 A. No.
- 3 Q. Have you read any textbooks on advertising?
- 4 A. No.
- 5 Q. Can you identify any textbooks on advertising?
- 6 A. No.
- 7 Q. Did you ever attend any conferences or seminars on
- 8 advertising?
- 9 A. No. My staff have.
- 10 Q. For the purpose of reporting to you, or --
- 11 A. For the purpose of learning. You see, advertising
- 12 can be helpful from the standpoint of marketing a
- 13 product. It can also be helpful from the standpoint
- 14 of, we think, marketing the nonbehavior. So
- 15 understanding how to market to children is important
- 16 for people who want to countermarket tobacco, so it is
- 17 mainly from that standpoint.
- 18 Q. When they would go to these seminars or
- 19 conferences, they would come back and they would report
- 20 to you?
- 21 A. They would report to the group, yes.
- 22 Q. And would they give you literature?
- 23 A. They brought back mostly ad literature, not
- 24 scientific studies. It's more -- these are more for
- 25 marketers, so they're more hands-on ad materials.

PAGE 20

20

- 1 tobacco advertising of any kind?
- 2 A. No. There was a fair amount of discussion among
- 3 the people at the conference of the opportunity of
- 4 using federal dollars to counter advertise. There is a
- 5 lot of interest among people in the advertising world
- 6 to tap into that potential windfall.
- 7 Q. Do you mean advertising, for example, against
- 8 smoking or against drinking?
- 9 A. Yes. Say there was a federal tobacco settlement
- 10 and there was a lot of money for countermarketing.
- 11 They are very interested in that.
- 12 Q. Advertising people are willing to go in any
- 13 direction on most issues.
- 14 A. So are attorneys or doctors.
- 15 Q. That's true.
- 16 Have you ever sold any product or any kind of
- 17 service in which you utilized advertising?
- 18 A. No.
- 19 Q. Does your work here at the hospital involve any
- 20 sort of work on the advertising for the hospital
- 21 itself?
- 22 A. No.
- 23 Q. You never spent any time studying advertising,
- 24 except, as you described, when you talked to children?
- 25 A. Correct.

2065019965

PAGE 21 SHEET 6

21

- 1 Q. Now, you are aware that you have been identified  
2 as an expert in this case?  
3 A. Yes.  
4 Q. Otherwise, us all being here would be a real  
5 surprise, wouldn't it?  
6 (Deposition Exhibit 2, Dr. Sargent's expert  
7 disclosure, was marked)  
8 Q. Doctor, I am going to show you what has been  
9 marked as Exhibit 2. That is your expert disclosure?  
10 A. Minus the first page.  
11 Q. It is missing the first page?  
12 A. It is. Well it is missing page -- yes. Yes, is  
13 the answer.  
14 Q. I am going to disassemble Exhibit 2 and insert the  
15 missing pages.  
16 I am going to show you what has been marked as  
17 Deposition Exhibit 2, and I have put two additional  
18 pages in it. Is that your affidavit or disclosure?  
19 A. Yes.  
20 Q. And you have signed it?  
21 A. Yes.  
22 Q. And that accurately reflects your opinions in this  
23 case?  
24 A. Yes.  
25 Q. My understanding is that one of your opinions is

PAGE 22

22

- 1 That's it? Armstrong would be the one that --  
2 A. The one important one.  
3 Q. Did you actually draft the expert disclosure?  
4 A. The expert disclosure was drafted by another  
5 attorney.  
6 Q. Another attorney?  
7 A. Yes.  
8 Q. You mean other than Mr. Leddy or Ms. Oski?  
9 A. Yes.  
10 Q. Who was the other attorney who drafted it?  
11 A. Neil Leloff.  
12 Q. Where is he from?  
13 A. Massachusetts.  
14 Q. And what was the purpose of the preparation of  
15 this affidavit or disclosure?  
16 MR. LEDDY: Let me just interpose here,  
17 to make the record clear. Dr. Sargent has been working  
18 with Attorney Leloff in a case in the Commonwealth of  
19 Massachusetts, a Medicaid case, and that is the  
20 connection there.  
21 MR. BROW: All right.  
22 MR. LEDDY: This particular expert  
23 disclosure was drafted by our office, but in  
24 conjunction with a disclosure by Attorney Leloff, so  
25 this product here actually is our draft, but --

PAGE 22

22

- 1 essentially that advertising causes children to smoke.  
2 A. Yes.  
3 Q. What is the basis for that statement?  
4 A. The 40 articles that I have referred to that I was  
5 reading over the weekend. There is an accumulated  
6 weight of evidence that supports advertising as an  
7 important causal factor in the initiation of smoking.  
8 Q. Of those 40 articles, do you know how many are  
9 referred to in your expert disclosure?  
10 A. No. But I could count them.  
11 Q. Are there some articles that you regard as  
12 particularly important to that issue that are not  
13 referred to in your expert disclosure?  
14 A. Yes.  
15 Q. Which articles would those be?  
16 A. There is one by Armstrong, which was written in  
17 1990, which provides longitudinal data suggesting that  
18 children are receptive to advertising before they start  
19 smoking, which came before Pierce's article, but is  
20 similar in nature to Pierce's February article.  
21 Q. Do you know where that article appeared?  
22 A. "Medical Journal of Australia."  
23 Q. Would you have a copy of that here?  
24 A. I would.  
25 Q. Okay. Maybe, at the break, you can get it.

PAGE 24

24

- 1 MR. BROW: But taken in large part from  
2 someone else's?  
3 MR. LEDDY: I think it's fair to say  
4 that the basis for the disclosure was from the other  
5 case.  
6 MR. BROW: Okay.  
7 Q. Are you testifying in a Medicaid case?  
8 A. Yes.  
9 Q. And have you given a deposition in that case?  
10 A. No.  
11 Q. Do you know, have you been disclosed as an expert  
12 in that case?  
13 A. Yes.  
14 Q. Obviously, it hasn't gone to trial yet?  
15 A. No.  
16 Q. Was some variant of Deposition Exhibit 2 actually  
17 part of an affidavit in that case?  
18 A. I'm not sure. There was a variant that was  
19 submitted in that case. What is an affidavit?  
20 Q. Something like that, only you sign under oath, and  
21 it usually has a notary who administers your signature  
22 and administers an oath.  
23 A. No, that hasn't been done.  
24 Q. In looking at Exhibit 2, there are a number of  
25 references to medical articles and journals, and some

2065019966

PAGE 25 SHEET 7

25

- 1 advertising journals as well. Did those references  
2 come from you, in terms of the preparation of Exhibit  
3 27  
4 A. Yes.  
5 Q. Okay.  
6 A. They are referenced in my article.  
7 Q. But Attorney Leifer did not go through and  
8 prepare some variant of 2 that set forth all of these  
9 footnotes and all these references without your input?  
10 A. No, he worked from my article.  
11 Q. Okay.  
12 A. And then I revised his draft.  
13 Q. Now, you said he worked from your article. Which  
14 article would that be? Would that be the most recent  
15 one?  
16 A. "Cigarette Promotional Items in Public Schools" is  
17 the title of the article.  
18 Q. Is there some reason that Armstrong was not  
19 included?  
20 A. I hadn't realized that Armstrong had longitudinal  
21 data, had cohort data, prospective data, until I  
22 reviewed it this weekend.  
23 Q. What is the significance of it having longitudinal  
24 data?  
25 A. What it does is, it shows that the exposure, the

PAGE 27

27

- 1 A. The part that a cross-sectional study -- you can  
2 from a cross-sectional study, you can draw conclusions  
3 about the association, but it is difficult to draw  
4 conclusions about the directionality of association --  
5 that is, did smoking come first and then they acquired  
6 cigarette promotional items, or did the acquisition of  
7 the items come prior to taking up smoking. And, in a  
8 causal chain, you would expect that the exposure would  
9 precede the outcome.  
10 It is very similar to how cigarette smoking was  
11 proven to cause cancer. So, first there was a  
12 cross-sectional study, and a number of cross-sectional  
13 studies, that showed that people with cancer were  
14 smokers. And that was followed by what we call  
15 "prospective studies" that took a bunch of people  
16 without cancer and followed them forward, and found  
17 that the ones that were smokers developed lung cancer.  
18 Q. Is it fair to say that a cross-sectional study  
19 will allow you to determine association but not  
20 causation?  
21 A. It's true to say that a cross-sectional study will  
22 allow you to show association but not directionality.  
23 You need more than just one study to show you  
24 causation.  
25 Q. And, without directionality, can you establish

PAGE 26

26

- 1 receptivity to advertising comes before the children  
2 started to smoke, so you can show that -- you know, my  
3 article, for example, shows that there is an  
4 association between ownership of the item and smoking.  
5 Q. Mm-hmm?  
6 A. It doesn't, because it is cross-sectional, doesn't  
7 show that the ownership preceded the smoking.  
8 Q. So, one limitation of cross-sectional studies is  
9 that they are unable to show cause and effect; they can  
10 show a relationship, but not a causal relationship. Is  
11 that right?  
12 A. Well, in order to show a causal relationship, you  
13 have to have several factors. You have to have a  
14 cross-sectional association; you have to show that the  
15 exposure preceded the outcome, so that you have to show  
16 a direction in the association; and you have to  
17 replicate it, so you have to show that it is not just a  
18 sample-specific finding, that it also shows up in other  
19 populations. So I think that the Armstrong piece is  
20 important, because it shows the directionality is there  
21 in a different population, population of Australian  
22 school children.  
23 Q. What is it about a cross-sectional study that  
24 doesn't permit you to draw conclusions regarding  
25 causation?

PAGE 28

28

- 1 causation?  
2 A. No.  
3 Q. Now, a longitudinal study will allow you to show  
4 association and directionality?  
5 A. Yes, because a longitudinal study -- a  
6 longitudinal study is the same as a prospective study.  
7 It means you start at one point in time observing a  
8 sample of people, and you follow them forward, with  
9 multiple observation points, so you could follow them  
10 forward to point B, or follow them at points B and C.  
11 What we did with our school-based study was a  
12 prospective study, because we sampled the children at  
13 the beginning of the last school year, and at the  
14 beginning of this school year, and then at the end of  
15 the school year.  
16 Q. You are talking about the study that is underway  
17 right now?  
18 A. Yes.  
19 Q. You indicated that it wasn't until this past  
20 weekend that you remembered that Armstrong was a  
21 longitudinal study?  
22 A. It wasn't until this past weekend, reviewing my  
23 articles, that I recognized that it was -- that  
24 Armstrong had data on advertising.  
25 Q. Had you -- you could not have relied on Armstrong.

2065019967

PAGE 29 SHEET 8

29

- 1 then, for any part of your opinion in this case, could  
2 you?  
3 A. I couldn't have relied on Armstrong for this.  
4 Q. For the disclosure, Exhibit 2?  
5 A. Correct.  
6 Q. But you believe that it provides additional  
7 support for the opinions set forth in Exhibit 2?  
8 A. Correct. It provides additional support for  
9 causation.  
10 Q. Do you know how you came to be hired in that  
11 Medicaid case that's in Massachusetts?  
12 A. I know Attorney Laffar.  
13 Q. On a personal basis?  
14 A. I know him through working with lead litigation.  
15 Q. He was involved in lead litigation?  
16 A. Yes.  
17 Q. Have you now told us about all the articles that  
18 you believe are supportive of your position?  
19 A. Yes.  
20 Q. Is there anything other than articles, any sort of  
21 personal experience, that you believe is supportive of  
22 your position that ads cause children to begin smoking?  
23 A. Sure. I mean, I'm a pediatrician. I have daily  
24 personal experience with children. I'm a father.  
25 Q. Do any of your kids -

PAGE 31

31

- 1 Q. What age, do you remember?  
2 A. 13. No. What age I first tried?  
3 Q. Yes.  
4 A. I think, maybe, 7.  
5 Q. Were your parents smokers?  
6 A. Yes, they smoked Winston's.  
7 MS. OSKI: I object to this line. I  
8 think it is outside the scope.  
9 Q. So you first experimented when you were 7, and  
10 continued when you were 13. Do you remember when you  
11 last experimented or tried it?  
12 A. Smoking cigarettes?  
13 Q. Yes.  
14 A. Probably - I don't think I have smoked a  
15 cigarette since junior high, maybe.  
16 Q. What was the reason for you starting or  
17 experimenting?  
18 A. I think the same as any child. I was pervasively  
19 exposed to cigarettes in my home environment, in my -  
20 in the environment that I walked around in, on  
21 television, everywhere, and I naturally had a curiosity  
22 about it. I didn't have insight into which was the  
23 most important factor, but the factors were even more  
24 pervasive then, I think, than they are today, because  
25 there was advertising on television. I can still sing

PAGE 30

30

- 1 A. I have personal experience with children.  
2 Q. Do any of your kids smoke?  
3 A. No.  
4 Q. How old are your children?  
5 A. My oldest is 14.  
6 Q. Have they ever tried it, do you know?  
7 A. Who can know? I don't believe they have.  
8 Q. They haven't told dad?  
9 A. They haven't told me if they have.  
10 Q. Did you ever smoke?  
11 A. I've tried smoking. I was never an addicted  
12 smoker.  
13 Q. Smoking cigarettes or a pipe or -  
14 A. I think I've tried pretty much all forms of  
15 tobacco.  
16 Q. Does your wife smoke?  
17 A. No.  
18 Q. Did she ever?  
19 A. I don't believe - she may have tried, but she  
20 certainly - her experience with tobacco is less than  
21 mine.  
22 Q. Is very limited?  
23 A. Very limited.  
24 Q. When did you try smoking?  
25 A. As a child.

PAGE 32

32

- 1 the songs.  
2 Q. And my guess is you are roughly in your 40s or  
3 late 30s?  
4 A. 42.  
5 Q. When you were a child, there was not a lot of  
6 antismoking material out there, was there, unlike  
7 today?  
8 A. In 1964, the first Surgeon General's report came  
9 out linking smoking with cancer, so - I wasn't aware  
10 of it, because I was pretty young at the time.  
11 Q. Would you agree that that there is a lot more  
12 antismoking literature, advertising, educational  
13 programs out there today than there were when you were  
14 a child?  
15 A. I'd say there is a little more, but I don't  
16 think - I wouldn't say there is a lot more compared to  
17 the size of the advertising budget promoting  
18 cigarettes. I think, you know, if you talked about -  
19 there is probably ten times more, but there was so  
20 little then that there is still very little out there.  
21 Q. There was virtually none when you were a child?  
22 A. Yes, there was. I mean, I remember watching a  
23 movie in junior high where a scientist held up a mouse  
24 and dropped some nicotine in the mouse's mouth, and the  
25 mouse went like this (witness indicated) and died. And

2065019968



PAGE 33 SHEET 9

33

- 1 I remember people talking about black lungs. That was
- 2 the approach then, to try to convince children that it
- 3 was bad for your health.
- 4 Q. Did your peers smoke?
- 5 A. I had no immediate close friends who smoked.
- 6 Q. Did you have older siblings who smoked?
- 7 A. No. I'm the oldest.
- 8 Q. Are there any particular ads that you remember
- 9 that caused you to begin smoking or prompted you to
- 10 smoke?
- 11 A. Well, when I first smoked, I smoked Winston's, and
- 12 the ads that I remember from back then are the Winston
- 13 television ads. And if you had to ask me which ad I
- 14 remember, it is the one that I can sing the song. Do
- 15 you want me to sing it?
- 16 Q. No, we will pass on that.
- 17 It is, also the brand your parents smoked?
- 18 A. It is. And when I smoked at 7, I took my parents'
- 19 cigarettes and smoked them with my sister.
- 20 Q. Do you think your parents smoking had much to do
- 21 with you experimenting?
- 22 A. I think it was a contributing factor.
- 23 Q. As compared to the ads, can you weigh them in
- 24 terms of importance?
- 25 A. I can't.

PAGE 35

35

- 1 drinking at an early age. As minors, we could purchase
- 2 alcohol 24 hours a day, and we know which stores sold
- 3 it. So, I mean, you would just - you could drive down
- 4 to certain convenience stores that everybody knew sold
- 5 to minors and just buy beer.
- 6 Q. Of course, you weren't driving back in junior
- 7 high, or is that another eccentricity of Reno?
- 8 A. No. But, you know, it was a social environment
- 9 that - Nevada has the highest rate of alcohol-related
- 10 disease in the nation, so -
- 11 Q. I take it you used to drink with your friends?
- 12 A. Yes.
- 13 Q. What prompted you to start drinking?
- 14 A. I think it was the - as I said, it was the
- 15 combined nature of the social environment. It's what
- 16 prompted any kid to start drinking, it's a combination
- 17 of what they see in their home environment, what they
- 18 see in their immediate peer environment, and the
- 19 general community environment towards alcohol, which
- 20 includes advertising. It is everything.
- 21 Q. Do you believe advertising led you to start
- 22 drinking?
- 23 A. I believe that the same kinds of effects that are
- 24 present linking advertising and smoking probably also
- 25 are there for alcohol. I don't think that that has

PAGE 34

34

- 1 Q. Did your sister continue to smoke?
- 2 A. No.
- 3 Q. Did you ever drink as a minor?
- 4 A. Yes.
- 5 Q. I assume you drank beer or wine?
- 6 MS. OSKI: Objection, I think this is
- 7 outside the scope also.
- 8 Q. You can go ahead and answer, unless she tells you
- 9 not to.
- 10 Did you ever drink as a minor?
- 11 A. Yes.
- 12 Q. You drank beer or wine?
- 13 A. Beer.
- 14 Q. With friends?
- 15 A. Yes.
- 16 Q. Do you remember what age you first started
- 17 drinking?
- 18 A. Junior high.
- 19 Q. That's young.
- 20 A. When did you start drinking?
- 21 Q. High school.
- 22 A. That's old. I grew up in Reno, Nevada.
- 23 Q. Oh.
- 24 A. And Reno, Nevada, I mean, talk about a social
- 25 environment that is designed to kind of encourage

PAGE 36

36

- 1 been as well studied as smoking, but I can tell you, in
- 2 my own practice, that the children in my practice, many
- 3 of them collect Absolut Vodka ads, and it is in the
- 4 last five years, in the course of talking to kids
- 5 clinically about what they drink, they are drinking
- 6 vodka. Now, kids didn't drink vodka ten years ago, but
- 7 there has been a massive vodka advertising campaign,
- 8 and I think it has affected the type of alcohol that
- 9 children choose.
- 10 Q. Well, let's assume for the sake of argument that
- 11 you are correct, that it affects the type of alcohol
- 12 they choose. Do you believe that it affects their
- 13 choice to drink or not?
- 14 A. To the extent that it helps them develop an
- 15 association between an image that they find helpful to
- 16 them, and the product. Okay? That is what causes kids
- 17 to take up - that's at least the attitudinal thing
- 18 that you need to have in a kid in order for them to be
- 19 receptive to using a certain product.
- 20 Q. Can you weigh for me the relative influences of
- 21 these various things that you have described as leading
- 22 someone to drink?
- 23 A. For smoking, I can.
- 24 Q. Okay.
- 25 A. There is not enough data. It is the longitudinal

2065019969

PAGE 37 SHEET 10

37

- 1 data that allows us to do that with smoking.  
2 Q. Do you favor banning alcohol advertising as well?  
3 Or severely restricting it?  
4 A. I believe restricting alcohol advertising would  
5 have an impact on drinking in children.  
6 Q. Positive impact, in the sense --  
7 A. That depends. A negative impact; it would  
8 decrease drinking. One of the things my wife learned  
9 at the conference -- my wife is the educator in the  
10 program.  
11 Q. Yes?  
12 A. One of the things my wife learned at the  
13 conference was that these ad people work really hard to  
14 try to figure out what the favorite ad is of children,  
15 and what do you think is the favorite TV ad of  
16 children, 1988?  
17 Q. Budweiser?  
18 A. Budweiser frogs and lizards. Very high product  
19 recognition among children. We have -- even  
20 two-year-old children recognize the Budweiser logo.  
21 MR. LEDDY: Off the record.  
22 (Discussion off the record)  
23 Q. Could you describe what your understanding of the  
24 Burlington ordinance is, or what it does?  
25 A. My understanding of the Burlington ordinance is

PAGE 39

39

- 1 A. No. Utah, actually. Utah has restricted  
2 storefront advertising for over 40 years, and it has  
3 the lowest rate of smoking in the nation. That is,  
4 amongst states.  
5 Q. Do you know to what extent that the lower rates in  
6 Utah are the result of religious preferences?  
7 A. No. As I said, the only way to really know how  
8 much would be attributable to the storefront  
9 advertising change that's proposed in the Burlington  
10 ordinance is to take a bunch of similar towns and to --  
11 Q. And that has not been done anywhere, to the best  
12 of your knowledge?  
13 A. I don't think that such a study is possible. I  
14 mean, it might be possible, but I think every town that  
15 would try to get the ordinance passed would have a lot  
16 of attorneys like yourself trying to fight the  
17 ordinance, so it would be impossible to implement the  
18 ordinance all at the same time, because the courts  
19 would all go at different speeds. You would have to  
20 have something like a court-ordered trial.  
21 Q. Or a state-imposed restriction, I suppose, would  
22 accomplish the same thing.  
23 A. But, you know, the state-imposed restriction, you  
24 get into the same issue that you do with Utah, right?  
25 Is it because, you know, there is a massive anti-smoking

PAGE 38

38

- 1 that it restricts advertising, both in front of and  
2 inside of stores, to black-and-white lettering. And  
3 it -- I think it is no more than two signs. And it  
4 restricts the size of the signs. It specifically  
5 restricts the use of pictures and logos on signs in and  
6 around stores. It restricts the distribution of  
7 cigarette promotional item catalogs through stores. It  
8 restricts stores from engaging in product giveaways.  
9 And it restricts the access of tobacco, in that it does  
10 not allow self-service.  
11 I think that is pretty much all of it.  
12 Q. And is it your opinion that those limitations in  
13 the ordinance will reduce teen possession of tobacco?  
14 A. Yes.  
15 Q. Can you give me some idea as to the extent of  
16 reduction that one should expect to see?  
17 A. I can't do that. The only way to really estimate  
18 that would be to do a study where you had, you know, 20  
19 identical towns, and you did the Burlington thing, you  
20 randomly selected ten towns to do the Burlington  
21 restrictions, and then you evaluated youth smoking in  
22 both of those -- both cases over time.  
23 Q. Are you aware of anyplace where such studies have  
24 been done, where such restrictions have been imposed,  
25 or similar restrictions?

PAGE 40

40

- 1 component other than the storefront advertising? Do  
2 you see what I mean?  
3 Q. Yes.  
4 A. So what you do is, you have to pair Burlington  
5 with, say, Plattsburgh, or Plattsburgh is kind of --  
6 you couldn't pair that with Burlington. But you find  
7 another town that would pair socioeconomically with  
8 Burlington, and then just intervene in one town.  
9 Q. Do you have any opinion on the magnitude of the  
10 reduction that will be experienced as the result of  
11 this ordinance being enforced?  
12 A. Yes.  
13 Q. Can you tell us what that is?  
14 A. 15 percent.  
15 Q. That 15 percent fewer children will possess or  
16 smoke tobacco?  
17 A. Yes.  
18 Q. And on what basis do you arrive at that number?  
19 A. It's based on John Pierce's study. John Pierce  
20 estimated that exposure to advertising and marketing is  
21 responsible for approximately a third of smoking -- you  
22 know, of children trying. So I'm estimating that the  
23 ordinance is going to eliminate half of the advertising  
24 that they are exposed to.  
25 Q. Didn't Pierce say something about 17 percent of

2065019970

PAGE 41 SHEET 11

41

1 the children would smoke as a result of advertising?  
2 A. I think he said 30. If you look at -- his  
3 attributable risk calculations, is what you want to  
4 look at. It's back here.  
5 Q. I am remembering 17 percent from here. I just  
6 want to make sure.  
7 (Deposition Exhibit 3, "Tobacco Industry Promotion  
8 of Cigarettes and Adolescent Smoking," was marked)  
9 Q. Doctor, I am going to show you what has been  
10 marked as Exhibit 3. Is that the Pierce article that  
11 you were referring to? I think I have all the pages in  
12 this one.  
13 A. Yes.  
14 Q. I notice on page 515 --  
15 A. Yes.  
16 Q. -- it says -- it is the first full paragraph in  
17 the first column -- "Our study estimates that tobacco  
18 industry promotional activities in the mid-'90s will  
19 influence 17 percent of those who turned 17 years old  
20 each year to experiment with cigarettes." You,  
21 obviously, are referring to a different number.  
22 A. Yes.  
23 Q. I have a copy.  
24 A. It is 17 percent of the total population.  
25 Q. Okay. I'm sorry. I didn't mean to interrupt you.

PAGE 43

43

1 of sports events, which I don't know if tobacco  
2 sponsors sports events or not.  
3 Q. I was going to ask if you were aware of any.  
4 A. I'm not aware of any.  
5 Q. Okay.  
6 A. But the other part that isn't eliminated by the  
7 Burlington law is the ability of adolescents to acquire  
8 cigarette promotional items. That is dependent on  
9 picking up the Marlboro Mills or the Camel Cash, which  
10 is included in the cigarette package, and that is not  
11 restricted by the Burlington law. And so, to me,  
12 that's a very important part of advertising, promoting  
13 tobacco.  
14 Q. What about seeing it in magazines, cigarette  
15 advertising?  
16 A. That's another part of it that is not restricted.  
17 Q. Okay. And what about seeing it, or seeing people  
18 smoking in movies?  
19 A. Well, that is not part of tobacco -- officially  
20 part of tobacco advertising and promotion.  
21 Q. Does it encourage kids to smoke?  
22 A. I think it may. It's part of the environment that  
23 kids observe, so it is equivalent to observing people  
24 on the street, only people in the movies have star  
25 status, so they probably count for more than people on

PAGE 42

42

1 You are referring to page 514?  
2 A. Under "Percent of Experimentation Attributable to  
3 Tobacco Promotional Activities."  
4 Q. Yes?  
5 A. All right? So if you look at the bottom part of  
6 that paragraph, "Using our attributable risk  
7 calculation, we estimate that tobacco promotional  
8 activities influence 34.3 percent of those adolescents  
9 to experiment." So, of the kids who experimented, a  
10 third of them were influenced to experiment by tobacco  
11 promotional activities. So I'm saying, eliminating  
12 half of the tobacco promotional activities through the  
13 Burlington law would reduce experimentation by 15  
14 percent.  
15 Q. Okay. On what basis did you conclude that half of  
16 the advertising Burlington youth get is as a result of  
17 this point-of-sale advertising?  
18 A. Well, if you think of the forms of advertising,  
19 there is storefront advertising, which in Burlington is  
20 a big part of visible advertising, because they're are  
21 no billboards available.  
22 Q. Yes?  
23 A. Another aspect of tobacco marketing are product  
24 giveaways, many of which are done through the stores.  
25 And another aspect of tobacco marketing is sponsorship

PAGE 44

44

1 the street.  
2 Q. What about seeing people smoke on television?  
3 A. That occurs so infrequently.  
4 Q. That is not significant?  
5 A. It is not really a big player, I don't think.  
6 Unless you are talking about movies on TV, through Show  
7 Time or HBO, or something like that. But it is mostly  
8 through watching Hollywood stuff.  
9 Q. What about sporting events that are sponsored,  
10 national sporting events, like race car?  
11 A. Race car, NASCAR. Or leaving the Burlington area  
12 and being --  
13 Q. We were going to get to that. But in terms of --  
14 A. I think, in terms of the kids day-to-day  
15 activities --  
16 Q. Yes?  
17 A. -- probably half of the cues that they get are  
18 through driving by or going into stores.  
19 Q. Is there any study that supports that?  
20 A. No, that is my own personal opinion.  
21 Q. Is it an educated guess, if you will?  
22 A. Yes.  
23 Q. And --  
24 A. Based on my knowledge of the behavior of children,  
25 based on my knowledge of where the ads are placed, and

2065019971

PAGE 45 SHEET 12

45

- 1 children's use of local convenience stores.  
2 Q. Have you ever followed one or more children around  
3 for the day, other than your own, and tried to  
4 determine, you know, how much time they spend in  
5 convenience stores, how much time they spend, you know,  
6 in front of the school, how much time they spend --  
7 A. I never have done a systematic study of how  
8 children spend their day.  
9 Q. Do you have any idea of what percentage of  
10 Burlington minors get cigarette or tobacco products in  
11 Burlington?  
12 A. No.  
13 Q. Do you have any idea what percentage go to  
14 Colchester, South Burlington, or Winooski, and would  
15 see ads there as a result of having gone to another  
16 community?  
17 A. No.  
18 Q. Do you have any idea what percentage of Burlington  
19 youth actually acquire cigarette or tobacco products in  
20 surrounding communities?  
21 A. No.  
22 Q. Of the types of ads that we were talking about --  
23 and in that, I will include movies within that  
24 category, although it is not an ad for a particular  
25 brand --

PAGE 47

47

- 1 associated with smoking in children.  
2 Q. Are you saying that 33 percent, roughly, of the  
3 reason children smoke is because of advertising?  
4 A. Correct.  
5 Q. And 66 percent is due to --  
6 A. -- other factors.  
7 Q. And how did we go from that breakdown -- 66  
8 percent and 33 percent -- to the 15 percent reduction  
9 you would expect in smoking in Burlington?  
10 A. That was my professional opinion, that about half  
11 of the advertising that they're exposed to is  
12 storefront advertising, and that the other half has to  
13 do with their acquisition of cigarette promotional  
14 items, you know, through catalogs they get from other  
15 places besides stores, or through their parents, or  
16 through some other avenue that the storefront  
17 advertising wouldn't be expected to affect.  
18 Q. Within the ordinance, can you break down the  
19 various impacts, the back of the wall clocks, for  
20 instance?  
21 A. No.  
22 Q. Different types of advertising have different  
23 effects, do they not?  
24 A. Yes.  
25 Q. And is there any hierarchy among types of

PAGE 48

48

- 1 A. Well, if you are talking with reference to  
2 Pierce's study, you can't include movies, because he  
3 didn't evaluate movies in the context of how he  
4 evaluated exposure to advertising. He only evaluated  
5 in the context of what is kind of legal advertising,  
6 you know, what is kind of legally engaged in by the  
7 tobacco industry. So when I refer to the 15 percent  
8 reduction, I am referring to advertising as it is  
9 measured in that article. If you want to talk about  
10 the movie effect, that would be something in the 66  
11 percent that he didn't measure, some unmeasured amount.  
12 Q. Putting the movies and all other environmental  
13 influences that play on children into the mix, what  
14 percent reduction would you expect to see in  
15 Burlington? 15 percent or somewhat less?  
16 A. What percent reduction in the experimentation?  
17 Q. Yes.  
18 A. 15 percent.  
19 Q. But you were basing that on the Pierce article?  
20 A. Yes.  
21 Q. And that did not account for movies?  
22 A. The movies would be part of the 66 percent that is  
23 due to other factors -- friends smoking, family  
24 smoking, rebelliousness, poor school performance,  
25 There are a lot of factors that predict or that are

PAGE 48

48

- 1 advertising that you see for cigarettes?  
2 A. Well, again, referring to Pierce's article, there  
3 seems to be a hierarchy, in that ownership of a  
4 cigarette promotional item seems to be more predictive  
5 of taking up smoking than being able to identify a  
6 favorite brand.  
7 Q. So, from that, would you conclude that promotional  
8 items are more effective advertising than -- what?  
9 A. I think if you had to put together a hierarchy,  
10 the acquisition of a cigarette promotional item and  
11 wearing it as an item of clothing is a much bigger  
12 environmental factor than walking by a clock that has a  
13 logo on it.  
14 Q. Now, you said it is a much bigger environmental  
15 factor. Does that convert into a much bigger positive  
16 factor?  
17 A. Yes. If you look at the paper, what you find is  
18 that -- this is the percent of children who had this --  
19 this is among children who, in 1983, never smoked, and  
20 weren't susceptible to smoking, 1,700 children. This  
21 is the percentage that progressed to smoking by 1996,  
22 over a three-year period, okay? And this is --  
23 Q. Is this progressed towards to smoking, or smoking?  
24 A. Towards smoking.  
25 Q. Okay.

2065019972

PAGE 49 SHEET 13

49

1 A. So they either developed an attitude that predicts  
2 smoking in the future, or they puffed on their first  
3 cigarette, or they became addicted smokers.  
4 Q. Well, there is a difference, isn't there?  
5 A. Sure there is a difference. But we are talking  
6 about moving in a continuum that starts as a never  
7 smoker and ends up kicking out 20 to 30 percent of  
8 18-year-olds in Vermont as addicted smokers.  
9 Q. Okay.  
10 A. Right? So it is moving up that continuum, and  
11 what you find is that, overall, something like 50  
12 percent of kids moved up that continuum. But if you  
13 dice them into their exposure to tobacco promotion and  
14 advertising, if their exposure is minimal - that is,  
15 they can't identify a brand or they have no item of  
16 clothing - about a third of them progressed, whereas,  
17 if they could identify a brand that - you know, of  
18 advertising that they remembered, it was 43 percent.  
19 If they had a favorite ad, it was 51 percent. And if  
20 they owned a cigarette promotional item or were willing  
21 to wear one or wanted one, it was 62 percent. So a  
22 very - an increasing effect as the receptivity to  
23 advertising goes up in the kid.  
24 Q. Well, doesn't that just indicate that, as kids  
25 become more willing to smoke, or less adamant about not

PAGE 51

51

1 A. It reinforces pictures.  
2 Q. What pictures?  
3 A. The pictures that they see in the magazines, the  
4 pictures they see in the cigarette promotional item  
5 catalogs.  
6 (Deposition Exhibits 4 through 8, each a  
7 photograph, was marked)  
8 Q. Doctor, have you ever been to Kerry's Kwik Stop in  
9 Burlington?  
10 A. No.  
11 Q. Have you ever been to Old North End Variety?  
12 A. Not to my knowledge.  
13 Q. Have you been to Burlington?  
14 A. Yes.  
15 Q. On more than one occasion?  
16 A. Yes.  
17 Q. You are generally familiar with -  
18 A. The layout.  
19 Q. - the layout there of surrounding communities?  
20 A. Actually, it is complicated. I have gotten lost  
21 in Burlington a number of times. Maybe it is just  
22 because I am from a small town.  
23 Q. Well, I got lost in this building. We won't hold  
24 that against you.  
25 Doctor, I am going to show you what has been

PAGE 50

50

1 smoking, they may pay more attention to the advertising  
2 and develop a favorite ad?  
3 A. Sure. But all that precedes the smoking, all  
4 right? So that process is a process that happens  
5 during early and late elementary school, when the kids  
6 are walking around and haven't even puffed on a  
7 cigarette.  
8 Q. Yes?  
9 A. Yes. It is all part of making them receptive to  
10 making that first smoke and moving along that  
11 continuum. And what makes them receptive is they have  
12 developed associations between the product and what  
13 they want to be. All right? So what the advertising  
14 does is, it allows the kid to associate smoking the  
15 cigarette with beautiful women, with being cool, with  
16 being happy, with being something that they don't feel  
17 quite there, but that they want.  
18 Q. Well, you have seen the advertising in various  
19 convenience stores, I'm sure.  
20 A. Uh-huh.  
21 Q. And the advertising frequently consists of a clock  
22 on the wall, say the Marlboro logo, red and white, a  
23 Kool sign that may show opening and closing times. How  
24 do those ads create an image in a child's mind that  
25 "That is what I want to be?"

PAGE 52

52

1 marked as Exhibit 4, and I represent to you that is a  
2 photo of the front door of Kerry's Kwik Stop. You see  
3 on there a number of signs. You see Camel?  
4 A. Yes.  
5 Q. And you see Winston?  
6 A. Yes.  
7 Q. And "No Bull," is that part the Winston logo?  
8 A. "No Bull" is part of the current Winston ad  
9 campaign.  
10 Q. You see - I'm not sure if that is a cigarette.  
11 A. That is a new kind of cigarette that is marketed  
12 in the same fashion as the Winston cigarette, the idea  
13 being that there are no additives, and if there are no  
14 additives, the idea being that it is healthier.  
15 Q. And you also see a no smoking sign?  
16 A. Yes. "We do not sell tobacco to younger children  
17 under 18."  
18 Q. The blue sign?  
19 A. Right.  
20 Q. What is it about this Camel logo on the window  
21 that you believe induces children to smoke?  
22 A. Okay. Can I put in my own thing?  
23 Q. Absolutely.  
24 A. But you will take it away from me if I put it in,  
25 right?

2065019973

PAGE 53 SHEET 14

53

- 1 Q. Darn right. We will teach you to offer.  
2 A. Okay. This is something that -  
3 Q. Let's get it marked.  
4 A. This is the latest Camel Cash catalog.  
5 (Deposition Exhibit 9, "Camel Cash. Timeless  
6 Collectibles, 1913-1998," was marked)  
7 Q. I show you what is marked as Exhibit 9. That is  
8 yours, is it not?  
9 A. Yes.  
10 Q. And you wanted to make a few comments about that?  
11 A. Yes.  
12 Q. What comments did you want to make?  
13 A. Well, the comments that I wanted to make, number  
14 1, is that this is the kind of catalog this began being  
15 distributed by Camel in January of this year, January  
16 of 1998. This was picked up at a local convenience  
17 store in Lebanon. That is not to say that the stores  
18 that you are representing distributed these catalogs.  
19 But the point that I wanted to make was that the images  
20 in these catalogs, in this catalog - say this gets  
21 into a kid's hands. There are a number of images in  
22 that catalog that say just what the company wants to  
23 say. This was Camel's ad campaign during the '70s and  
24 '80s, when we were young.  
25 Q. You are referring to - well, there are no page

PAGE 55

55

- 1 about having the advertising in stores is, one of the  
2 things that we realized, surveying children, is that  
3 most children in school think most kids smoke.  
4 Q. Yes?  
5 A. And they think that most people smoke. And having  
6 the advertising in the store, around the storefront,  
7 reminds the kid, every time they pass the store, that  
8 smoking is a big thing, that smoking is out there. And  
9 it leads to the false impression among children that  
10 smoking is more prevalent than it really is, which is  
11 another factor that relates to the uptake of smoking.  
12 Q. I don't understand. Are you saying that you  
13 shouldn't have advertising because it may convince  
14 people that it is -  
15 A. Not people; children.  
16 Q. - or children that it is common?  
17 A. That cigarette smoking is the majority thing to  
18 do. Children don't like to be in the minority. If  
19 they think they're nonsmokers and they're in the  
20 minority, they'll want to move towards the majority  
21 position.  
22 Q. Isn't it true that most of the children who see  
23 advertising for cigarettes do not experiment?  
24 A. No.  
25 Q. What is the percentage of children who experiment?

PAGE 54

54

- 1 numbers, are there?  
2 A. Well -  
3 Q. It is something entitled, "The Camel legend  
4 continues," and you are pointing to a picture on the  
5 right-hand side?  
6 A. A picture of a rugged man, sitting on a log by a  
7 stream, lighting up a Camel, just the kind of  
8 circumstance a young man in Burlington might find  
9 himself in. He might want to look like that guy, even.  
10 In the middle of the catalog, the very center of  
11 the catalog, back comes our friend, Joe Camel, who is  
12 famous for depicting all sorts of adolescent-friendly  
13 behaviors, including wearing black leather jackets,  
14 riding a motorcycle, walking around in an urban  
15 setting, engaging in night life, engaging in horseplay,  
16 in a convertible, offering the cigarettes to somebody  
17 else. And it is those kinds of images that I would  
18 suggest that are concerning.  
19 To the extent that the logos recaptures these  
20 images for children that have looked at them and  
21 internalized them, the logos are bad.  
22 Q. So you are saying that, the logos are bad in an  
23 indirect way, because they bring to mind other  
24 advertising that they have seen?  
25 A. Sure. In magazines. The other thing that's bad

PAGE 56

56

- 1 A. Seniors in high school?  
2 Q. By seniors in high school.  
3 A. 68 percent, two-thirds.  
4 Q. What is the percentage of children who become  
5 regular smokers?  
6 A. Depends on --  
7 Q. How you define "regular"?  
8 A. Yes. If you define it the way they do in most  
9 adult surveys - that is, smoking more than a hundred  
10 cigarettes in your life - it's about a third.  
11 Q. Can I define it by smoking every day?  
12 A. By graduation from high school in Vermont, about  
13 15 percent.  
14 Q. What if I define it as having smoked within the  
15 last month?  
16 A. 30 percent.  
17 Q. Is experimentation the problem, or is it the  
18 continuing smoker or the person who smokes more than,  
19 say, you did?  
20 A. What are you talking about? In terms of ultimate  
21 health problem?  
22 Q. Yes.  
23 A. In terms of the likelihood of getting lung cancer?  
24 Q. Yes.  
25 A. It is the 30-year smoker.

2065019974

PAGE 57 SHEET 15

57

- 1 Q. What about in terms of the ordinance or the  
2 statute that makes it illegal to possess cigarettes?  
3 Is one category of offender more prevalent than the  
4 other, the regular smoker versus the experimental?  
5 A. I don't understand the question.  
6 Q. Neither did I. It sort of lost its meaning to me  
7 midway through.  
8 In terms of health, it is the regular smoker who  
9 presents more of a problem or has more problems with  
10 smoking?  
11 A. It's the regular smoker that develops the  
12 long-term, smoking-related disease that kills him.  
13 Q. What percentage of high school students smoke  
14 marijuana?  
15 A. In Vermont, I'm not sure. It's in the Youth Risk  
16 Behavior Survey, and they publicized that not long ago,  
17 but I'm not sure exactly what percent. It's probably  
18 20 percent. Something like that.  
19 Q. Do you know what percent have smoked within the  
20 last 30 days?  
21 A. No.  
22 Q. Do you know why kids start to smoke marijuana?  
23 A. We know - it's a little bit like alcohol. We  
24 know less about that than we do about smoking, but we  
25 know all of the behaviors cluster, that kids who -

PAGE 58

59

- 1 are something immutable in the child?  
2 MS. OSKID: What do you mean by the  
3 characteristics?  
4 MR. BROW: The characteristics of  
5 rebelliousness, counterculture.  
6 A. I think that children become rebellious  
7 irrespective of tobacco marketing. It is a normal part  
8 of the process of adolescent development.  
9 Q. Yes?  
10 A. To the extent that advertising links rebellious  
11 behavior with smoking, it causes those kids to take up  
12 smoking. They start out being rebellious, the  
13 advertising links rebelliousness with the act of  
14 smoking; they take up smoking as an expression of their  
15 rebelliousness.  
16 Q. Is it the advertising that links it to  
17 rebelliousness or is it the school programs, the  
18 warnings they get, the fact that the law precludes them  
19 from processing or using tobacco products?  
20 A. It is all of those factors. They interlink. I  
21 mean, there is nobody with any knowledge about this  
22 that is going to say that there is any one factor that  
23 is the causal factor. If you want to - if you are  
24 worried about smoking in a community, you have to  
25 address it at a number of levels. You have to address

PAGE 58

58

- 1 that smoking is usually the first step, smoking or  
2 drinking, but that children who take up smoking or  
3 drinking are more likely to experiment with other  
4 drugs.  
5 Q. Are you suggesting that the cigarette ads lead to  
6 smoking, which in turn leads to drinking, which in turn  
7 leads to smoking marijuana?  
8 A. No, I'm suggesting that the behaviors are  
9 associated. Remember, to show that there is causation,  
10 you have to have some kind of a theory that - if you  
11 want me to come up with a theory that links them, I  
12 probably could think of something.  
13 Q. I don't want you to stretch.  
14 A. It is not a stretch. I mean, children who smoke,  
15 often smoke because the cigarette - the smoking  
16 behavior, what is - you know, what does it mean for  
17 them, what are they expressing through their smoking  
18 behavior? They're expressing rebelliousness, they're  
19 expressing being kind of counterculture, and often  
20 those expressions come from the way cigarette smoking  
21 is portrayed in advertising, in movies. And it's the  
22 kids that have those characteristics that are more  
23 likely to go on and try other things.  
24 Q. Do you think those ads lead to those  
25 characteristics, or do you think those characteristics

PAGE 59

60

- 1 it at the level of the advertising, which prompts  
2 children to take up smoking and which prompts adults  
3 who have quit to relapse, and you have to take it up  
4 with respect to where smoking is allowed, because the  
5 more you restrict the public places where smoking is  
6 allowed, the more smokers feel like they ought to quit.  
7 The bottom line, the more they feel like they're  
8 excluded, the less comfortable it is to smoke. And,  
9 you know, there are a lot of factors that you have to  
10 evaluate and think about when you are trying to  
11 encourage people who - you know, we are talking about  
12 adults, now, who have been smoking for a long time, to  
13 quit.  
14 Q. Let me show you - I think we had already talked  
15 about this Exhibit 4, and we talked Camel, when we  
16 started talking about Exhibit 2. My understanding of  
17 your testimony with regard to the problem of the Camel  
18 logo on the door here is that it causes children to  
19 think of other advertising that they've seen in  
20 magazines, for instance?  
21 A. The same is true of the Winston ad.  
22 Q. Let's talk about the Camel ad. We will get to the  
23 Winston ad.  
24 A. Okay. There is not a kid in the world that would  
25 see that and not think of Joe Camel. It is just - it

2065019975

PAGE 61 SHEET 16

61

1 Is rational, it is logical, it makes sense.  
2 Q. But is there anything about this advertising, this  
3 Camel sign here, that induces children, other than  
4 indirectly, through reference to other advertising?  
5 A. It's pretty. It's got colors that children  
6 respond to.  
7 Q. What colors do children respond to?  
8 A. Bright kinds of colors. It's attractive.  
9 Q. From that, you believe that children would be  
10 induced to smoke?  
11 A. From that one sign?  
12 Q. Yes?  
13 A. Would seeing that one sign in one child cause them  
14 to smoke?  
15 Q. Right.  
16 A. It is the cumulation, right? It's seeing all the  
17 signs everywhere. There are a massive amount of signs  
18 out there, so every time -- they probably pass a sign  
19 like that ten times in the course of their day, okay?  
20 Q. Mm-hmm?  
21 A. So nobody is going to argue that that one sign,  
22 sitting there, causes child A to smoke. That is  
23 absurd. But the sum total of the advertising that they  
24 see in and around all the stores that they go to and  
25 pass has an effect. There is no question about it.

PAGE 63

63

1 Q. Why does it mean that? Do they have other  
2 advertising that says "No Bull; we don't add  
3 additives"?  
4 A. Correct.  
5 So "No Bull" is there, it is their sound bite, if  
6 you will. And the sound bite is about, number 1, no  
7 additives, and, number 2, with innuendo, it is about  
8 people who -- well, my favorite "No Bull" Winston ad is  
9 an ad that was run in Rolling Stone Magazine. I don't  
10 have a copy of it, but it shows a person in a business  
11 suit from behind, with their head up their ass, and it  
12 says -- the caption is, "Still smoking additives?"  
13 No Bull, Winston.  
14 Q. Do you have any of the "No Bull" promo --  
15 A. I don't have any here.  
16 Q. -- materials like this?  
17 A. And, you know, I don't collect ads. I collect  
18 promotional item catalogs.  
19 Q. Because that is part of your study?  
20 A. That is part of my study.  
21 Q. Let me get back to my question, which was: Do you  
22 believe that this Winston sign in conjunction with this  
23 Camel sign would induce children to smoke?  
24 A. To the extent that seeing that causes a young  
25 adolescent to remember that ad that they saw that shows

PAGE 62

62

1 Q. Let's throw in the Winston sign. You wanted to  
2 talk about the Winston sign. Does the combination of  
3 these two signs induce a child to smoke, or, once  
4 again, is it only by reference to other advertising  
5 that is out there?  
6 A. Well, you look at the caption there.  
7 Q. "No bull."  
8 A. Do you know about the "No Bull" advertising  
9 campaign? Do you know anything about it?  
10 Q. Absolutely nothing. So why don't you tell me  
11 about the "No Bull" campaign?  
12 A. And it is interesting that you don't know about  
13 it, because, you know, advertisers say that they put  
14 out these campaigns to get smokers like you to change  
15 brands, but, in fact, adults don't notice them. Kids  
16 notice them. You ask any kid about the Winston  
17 "No Bull" campaign. They are going to tell you about  
18 the pictures in the campaign, they are going to tell  
19 you where they saw it, and what it means to them,  
20 because they noticed it.  
21 Q. What is the "No Bull" campaign?  
22 A. The "No Bull" campaign is a campaign that links  
23 innuendo with the notion that Winstons are natural  
24 and somehow less damaging. "No Bull" means: We don't  
25 add additives, and the depiction --

PAGE 64

64

1 the guy with his head up his butt.  
2 Q. But this ad, in and of itself?  
3 A. Again -- you asked me that before. There is  
4 nobody in their right mind that would say a  
5 six-year-old, walking up to that store and seeing that  
6 ad would go out and buy Winston cigarettes and smoke.  
7 It is the summation of all the ads in all the stores  
8 that they go to in their daily life.  
9 Q. What about Newport -- I'm going to show you what  
10 has been marked as Exhibit E. Do you see the Newport  
11 clock?  
12 A. Yes.  
13 Q. I will represent to you that this picture was  
14 taken in Kerry's Kwik Stop. It is a Newport, which is  
15 the name of a cigarette, I assume.  
16 A. Yes. It is a heavily-advertised, menthol  
17 cigarette.  
18 Q. And the clock actually forms the "O"?  
19 A. Yes.  
20 Q. Or it appears to?  
21 A. Yes.  
22 Q. Do you believe that would cause anyone, or would  
23 induce any child to smoke, or, once again, is it only  
24 indirectly, through association with other advertising?  
25 A. (Witness nodded his head).

2065019976



PAGE 65 SHEET 17

65

- 1 Q. You have to say yes. Or no.  
2 A. Again, it is the sum total of all the advertising  
3 they see.  
4 Q. Do you believe that the advertising in Kerry's  
5 Kwik Stop - and I will give you Exhibits 6, 7, and 8,  
6 which is the advertising set forth in Kerry's. Do you  
7 believe that advertising, in and of itself, has caused  
8 any children to begin smoking?  
9 A. I think this is a fascinating photo.  
10 Q. You have to refer to the number.  
11 A. It is Exhibit 8. If I look at this Exhibit 8 -  
12 and here I assume I am standing at the counter buying  
13 some candy, right? Is this a counter where they check  
14 the kids out, where they sell the stuff?  
15 Q. I would assume it is a counter. Well, actually,  
16 Laddy hangs out there more than me.  
17 A. Is this the counter you go to to buy your candy  
18 bar? I am a child standing at a counter, buying a  
19 candy bar. Here is my vision. The amount of area in  
20 my visual field that is taken up by tobacco  
21 advertising, it completely overwhelms any other  
22 advertising in the place. The only other thing I  
23 recognize there is the Visa card. So, again, the  
24 tobacco advertising overwhelms everything else. Right?  
25 It's like all you see. And the kids notice - you ask

PAGE 67

67

- 1 Q. So let's eliminate promotional programs.  
2 A. Unless there are some giveaways. There could be  
3 some two-for-one packs, in which case you would have  
4 promotions.  
5 Q. Well, two-for-one is not an inducement to smoke, is  
6 it?  
7 A. It's a promotional, is it an inducement to smoke?  
8 It is an inducement to purchase, probably.  
9 Q. If you don't want a product, two-for-one is of  
10 little value to you, isn't that true?  
11 A. Right, but if you want to double your bang for  
12 your buck, it's an inducement.  
13 Q. But, under those circumstances, the decision will  
14 already have been made to smoke.  
15 A. The two-for-one prompts the actual decision.  
16 Q. Are you saying that a two-for-one sale would cause  
17 someone who was not otherwise interested in purchasing  
18 the product to buy it?  
19 A. That's why they do it. Ask the companies why they  
20 do it. That is why they do it.  
21 Q. What is your basis for saying that?  
22 A. Their stated objectives for their advertisements.  
23 Q. Where did you see the stated objective for  
24 two-for-one was to induce people who didn't otherwise  
25 smoke to smoke?

PAGE 68

68

- 1 kids about the advertising. They could tell you every  
2 ad that is in the store.  
3 Q. Okay.  
4 A. Because they notice it. You don't notice it, but  
5 they do.  
6 Q. Now I would like you to answer my question. My  
7 question was: Take the advertising depicted in  
8 Exhibits 4 through 8, and can you tell me whether that  
9 collection of advertising has caused the child to  
10 commence smoking, in and of itself, what you see in  
11 Exhibits 4 through 8?  
12 A. I think that amount of advertising could have.  
13 Q. Could have?  
14 A. Yeah. That's enough. That is an example of the  
15 summation effect, okay?  
16 Q. Would it be your opinion that it has caused?  
17 A. Yes.  
18 Q. And on what do you base that?  
19 A. Pierce's article, and the other 50 articles that I  
20 read, and the 10 or so articles that I cite showing  
21 that recognition of brands, having a favorite brand,  
22 and being involved in promotional programs is  
23 associated with smoking.  
24 Q. Well, do you see any promotional programs here?  
25 A. No.

PAGE 68

68

- 1 A. No, two-for-one is to induce the purchase. Now,  
2 the tobacco companies will say it is to induce the  
3 purchase of an adult like you to purchase another  
4 brand. I'm saying it is just as much of an inducement  
5 for a kid who hasn't purchased anything before.  
6 Q. But is it an inducement to smoke or is it an  
7 inducement to purchase that brand, versus some other  
8 brand?  
9 A. If they purchase it, it becomes an inducement to  
10 smoke, right?  
11 Q. I don't follow that.  
12 A. You think they purchase it to do what with it? I  
13 mean -  
14 Q. But, at the point of purchase, haven't they  
15 already made the decision that they want to purchase  
16 cigarettes to smoke?  
17 A. There are a lot of kids that are on the verge of  
18 making the decision, you know, that haven't done it  
19 yet, but are very close to making the decision.  
20 Q. Two-for-one causes them to purchase?  
21 A. Could I cite a study? No. But in terms of the  
22 possible realm of effects, sure, that is a possible  
23 scenario. Sure.  
24 Q. I have difficulty in understanding how getting two  
25 of a product that you don't want causes you to want to

2065019977

PAGE 69 SHEET 18

69

1 buy the product.  
2 A. It's not a product that they don't want, it is a  
3 product that they haven't either gotten the - it's a  
4 product that they haven't yet purchased, but it is a  
5 very, you know, interesting product to them.  
6 Q. Okay. Assume there are no giveaways. Are there  
7 any particular ads in here that you find offensive, or  
8 do you find all of them equally offensive?  
9 A. I think my statement is that, were the Burlington  
10 law in place, there would be one simple sign, or two  
11 simple signs that say "Cigarettes sold here," and it  
12 would say the brands. The children walking into that  
13 store would see no imagery, they would see no color  
14 associated with the brands, they would see no writing  
15 such as "No Bull," and it would not have any impact on  
16 them as far as the advertising impact. So whatever  
17 impact were there, it would be gone.

18 MR. BROW: Let's take a break.

19 (Recess)

20 (Deposition Exhibit 10, document titled "General  
21 Pediatrics & Preventive Pediatrics," citing "Early  
22 Initiation of Tobacco Use Among Rural School Children,"  
23 by James D. Sargent, et al.)  
24 (Deposition Exhibit 11, "Influence of Education  
25 and Advertising on the Uptake of Smoking by Children,"

PAGE 71

71

1 when smoking or possession of tobacco as a result of  
2 the ordinance, and you indicated 15 percent, and you  
3 did that based on the Pierce study?  
4 A. Yes.  
5 Q. Is that correct?  
6 A. Yes.  
7 Q. Does that 15 percent include an adjustment for  
8 tobacco advertising that Burlington minors will be  
9 subjected to when they go outside of Burlington?  
10 A. By that, do you mean a statistical adjustment?  
11 What I'm saying is, this is my opinion.  
12 Q. Right.  
13 A. So, can I just - can I just write something?  
14 What I just want to do is show you that the Pierce  
15 study, okay, said, of all of the kids that  
16 progressed -  
17 Q. Right?  
18 A. - those are kids that switched from being never  
19 smokers to somehow either being receptive or having  
20 smoked, over a three-year period. Of all the kids that  
21 progressed, and that was about 40 or 50 - 50 percent  
22 of the children in California, one-third of those kids'  
23 progression is attributable to advertising and  
24 promotion. Okay? So of the kids that progressed, he  
25 is saying his study suggests that a third of that is

PAGE 70

70

1 by Bruce K. Armstrong, et al., was marked)  
2 Q. Doctor, let me show you what has been marked as  
3 Exhibit 10. Could you identify that for me?  
4 A. That is an abstract that was submitted to the  
5 Society for Pediatric Research, and was published in  
6 "Pediatric Research" in April of 1998.  
7 Q. And let me show you what has been marked as  
8 Exhibit 11 and have you identify that for me.  
9 A. Yes. This is the Australian article from the  
10 "Medical Journal of Australia" that I referred to  
11 earlier, published by Armstrong.

12 MS. OSIG: Date on that?

13 THE WITNESS: 1990.

14 Q. I notice the abstract references the study that  
15 you are involved in, and it refers to it as a  
16 cross-sectional study?

17 A. Correct.

18 Q. That is, in fact, what it is?

19 A. It's a cross-sectional study, because it's the  
20 first - it involves just the first survey of a  
21 longitudinal study.

22 Q. But the second survey of the data, that hasn't  
23 been corrected and assembled yet?

24 A. Correct. We don't have any of that data at hand.

25 Q. Earlier, we were talking about the reduction of

PAGE 72

72

1 attributable to advertising and promotion, Okay?  
2 Q. Right.  
3 A. So when I say 15 percent, I'm just saying, I  
4 estimate that storefront advertising is about 15  
5 percent of the advertising kids are exposed to. So I'm  
6 saying half of the effect.  
7 Q. 40 to 50 percent in Pierce's survey made some  
8 progression?  
9 A. Yes.  
10 Q. And he attributed one-third of that progression to  
11 promotion?  
12 A. Of the kids that progressed.  
13 Q. Of that 40 to 50 percent?  
14 A. That progressed. One-third progressed due to the  
15 activities. Now, the 17 percent figure that you  
16 referred to is out of the whole population.  
17 Q. Let's stick with your numbers, because I want to  
18 make sure I understand.  
19 A. Yes.  
20 Q. Pierce says 40 to 50 percent progressed. He also  
21 says that one-third of that 40 to 50 percent -  
22 A. Progressed because of advertising and promotion.  
23 Q. Right. Okay. So we end up with 13 to 16 percent  
24 that progressed due to advertising and promotion?  
25 A. Of the whole population, 17 percent is the figure

2065019978

PAGE 73 SHEET 19

73

- 1 he cites in his discussion.
- 2 Q. Well, it would be one-third of the 40 to 50
- 3 percent that progressed, wouldn't it?
- 4 A. Yes. 50 percent progressed, right?
- 5 Q. Okay.
- 6 A. A third of that.
- 7 Q. So that would be 16 percent of the -- 13 to 18
- 8 percent of the entire population?
- 9 A. Yes. But I mean, he actually calculated it out.
- 10 He said, 17 percent of the total population, all right?
- 11 Q. All right.
- 12 A. You don't even have to be -- you don't have to say
- 13 about. He said 30 percent -- 34.3 percent of the ones
- 14 who progressed, progressed because of promotional
- 15 activities. And out of the whole population, 17
- 16 percent progressed.
- 17 Q. Okay. Of that percent, how many progressed to
- 18 smoking, as opposed to just moving up the scale?
- 19 A. Don't know.
- 20 Q. Does he give you that data?
- 21 A. I don't know if he says it. He probably does.
- 22 Q. Doesn't he give you --
- 23 A. Yes, he does. Do you want me to cite?
- 24 Q. Sure.
- 25 A. Okay. So of the kids in 1993, 49.7 percent

PAGE 75

75

- 1 just sort of your ballpark opinion?
- 2 A. It is my personal opinion. You know, it could be
- 3 a third, it could be two-thirds.
- 4 Q. That half gets applied to what number?
- 5 A. Well, it depends on what your reference is. If
- 6 your reference is the whole population, then the half
- 7 gets applied to 17 percent. If your reference is the
- 8 kids that went on to, you know, become, you know,
- 9 further along in their smoking, the number is twice
- 10 that. It is 34 percent -- I mean 16 percent, half of 34
- 11 percent.
- 12 Q. Let me apply it to those children who become
- 13 regular smokers.
- 14 A. Okay.
- 15 Q. Would it be 1.6 percent?
- 16 A. No, it would be less. The 3.6 percent -- what he
- 17 is saying is that, of those kids, a third have their
- 18 smoking attributable, so it would be a third of this
- 19 figure, it would be --
- 20 Q. 1.2 percent?
- 21 A. 1.2 percent, yes.
- 22 Q. So, in your opinion, 1.2 percent of the children
- 23 who would become regular smokers will not become
- 24 regular smokers as a result of the Burlington
- 25 ordinance?

PAGE 74

74

- 1 progressed. Okay?
- 2 Q. Yes.
- 3 Actually, Doctor, could you tell us what page you
- 4 are referring to?
- 5 A. Yes. Page 513, the second paragraph of the
- 6 results section.
- 7 Q. 49.7 progressed?
- 8 A. Yes. That is the total number, okay?
- 9 Q. Right.
- 10 A. Now, the breakdown within that 49.7 percent is
- 11 16.6 percent becoming susceptible, and what that means
- 12 is that they have developed attitudes that are highly
- 13 predictive of them taking up smoking in the coming
- 14 years. 29.5 percent actually experimented, that is,
- 15 they smoked somewhere between one and one hundred
- 16 cigarettes over the three-year period. And 3.6 percent
- 17 became what he would call regular smokers, that is,
- 18 they smoked more than 100 cigarettes.
- 19 Q. What I'm trying to get at is how you came up with
- 20 the 1.6 percent. Is that a number that you want to
- 21 stick with, or, in light of going through the actual
- 22 figures, do you want to change that number?
- 23 A. I am willing to stick with half the effect being
- 24 storefront advertising.
- 25 Q. And there is no studies that support that, that is

PAGE 76

76

- 1 A. No.
- 2 Q. No?
- 3 A. A third of the children who would have become
- 4 regular smokers would not become. All right? 1.2
- 5 percent is a third of 3.6 percent, right?
- 6 Q. Right.
- 7 A. So, of the total population, you are going to
- 8 eliminate 1.2 percent regular smokers, but of the total
- 9 population, only 3.6 percent become regular smokers.
- 10 And that is if Burlington kids initiate at the same
- 11 rate as kids in California.
- 12 Q. Okay.
- 13 A. Okay? So you could calculate your own initiation
- 14 rate among the Burlington population. I don't know if
- 15 anybody has those data.
- 16 Q. I'm sorry. I am having trouble understanding what
- 17 applies to what here. He says 49.7 of the children
- 18 progressed towards smoking as a result of advertising.
- 19 A. Yeah.
- 20 Q. And you are saying one half of that effect is due
- 21 to storefront ads. So if we apply that to Vermont --
- 22 A. No, no.
- 23 Q. No?
- 24 A. A third.
- 25 Q. A third?

2065019979

PAGE 77 SHEET 20

77

- 1 A. Yes. 34-point - I'm sorry. I think it is - if
- 2 I could just - I don't know how to get this in the
- 3 thing, but I could help you -
- 4 Q. Why don't you write it down, and I will try to
- 5 convert it to the transcript somehow. And I will get
- 6 out of your way.
- 7 Let's use a sheet of paper.
- 8 A. So, here you got this group of kids that were
- 9 interviewed in 1993, and it's - I don't know - 1,752
- 10 kids. These are California kids.
- 11 Q. Doomed already.
- 12 A. All right?
- 13 Q. Yes.
- 14 A. Now, you interview them again in 1996, all right?
- 15 Q. Yes.
- 16 A. And 49.7 percent of these kids have progressed,
- 17 And 51.3 percent are still nonsusceptible, never
- 18 smokers - that is, they have never puffed on a
- 19 cigarette, and they don't intend to smoke in the next
- 20 six months, or they wouldn't smoke if a friend offered
- 21 them. We call them "nonsusceptible never." Okay?
- 22 Q. Yes.
- 23 A. The thing that makes it a longitudinal study is,
- 24 three years have lapsed between the baseline questions
- 25 where they asked kids a lot of questions about smoking.

PAGE 78

78

- 1 A. So these kids have smoked 1 to 99 cigarettes in
- 2 this three-year period.
- 3 Q. Yes.
- 4 A. And 3.6 percent have smoked greater than 100.
- 5 Now, Pierce has other longitudinal data that shows that
- 6 these kids, on average, are going to smoke 20 or 30
- 7 years before they quit. So these are the kids that are
- 8 actually hooked at this point in time.
- 9 Q. By "these kids," you are talking about 3.6
- 10 percent?
- 11 A. Correct.
- 12 Q. That would be 3.6 percent of the total sample?
- 13 A. Correct.
- 14 Q. All right.
- 15 A. Correct.
- 16 Q. Now, what -
- 17 A. Now, he is saying that of these kids that
- 18 progressed -
- 19 Q. Yes?
- 20 A. - a third of them progressed as a result of
- 21 exposure to advertising and promotion.
- 22 Q. Okay.
- 23 A. Okay? So if you want the percent that progressed,
- 24 it would be a third of this.
- 25 Q. Could we put "Result of Advertising" up here?

PAGE 79

79

- 1 Including questions that allowed them to gauge their
- 2 receptivity to advertising.
- 3 Q. Okay.
- 4 A. So that's when all these things were gathered, and
- 5 the outcome information, whether they were smokers or
- 6 where they were in the smoking continuum - Pierce
- 7 called call this "the smoking uptake continuum" -
- 8 Q. Right.
- 9 A. - was evaluated in 1996.
- 10 Q. Right.
- 11 A. So it is longitudinal. We measure the smoking
- 12 outcomes here. And you measure the predictors of
- 13 smoking status here.
- 14 Q. Okay.
- 15 A. Okay?
- 16 Q. Yes. Now, this 49.7 percent consists of 16.6
- 17 susceptible?
- 18 A. Yes. So of that, if you want to break that down,
- 19 you've got 16.6 percent that are susceptible but have
- 20 never experimented.
- 21 Q. Yes?
- 22 A. So they're susceptible never smokers. And to 29.5
- 23 percent here, and then 3.6, and hopefully 16.6, 29.5,
- 24 and 3.6 will all add up to 49.7.
- 25 Q. I believe it does.

PAGE 80

80

- 1 A. Yes.
- 2 Q. That way, we can all know what we are looking at.
- 3 A. Yes.
- 4 So it would be 16.6 - could you grab the
- 5 calculator off the desk?
- 6 You multiply by .346. I think that is what he
- 7 says here. Of those who progressed, 34.5 progressed
- 8 because of advertising and promotional activities, so
- 9 it is 34.5,
- 10 Q. 34.5?
- 11 A. 34.5. Those are the figures -
- 12 Q. Let's put it on the record, so -
- 13 A. Of each of these proportions that went on to -
- 14 Q. Let's take them one at a time. 16.6 percent
- 15 became -
- 16 A. Susceptible never smokers.
- 17 Q. Okay.
- 18 A. 5.6 percent of the total population became
- 19 susceptible never smokers, because of the result of the
- 20 cigarette advertising.
- 21 Q. Because of that advertising?
- 22 A. Yes.
- 23 Q. Okay.
- 24 A. 29.5 percent became experimental smokers.
- 25 Q. All right.

2065019980

PAGE 81 SHEET 21

81

- 1 A. 10.1 percent became experimental smokers because
- 2 of the advertising effects.
- 3 3.6 percent became addicted smokers.
- 4 Q. Because of advertising?
- 5 A. 1.2 percent because of advertising.
- 6 Q. So 1.2 percent of the total 1,752?
- 7 A. Yes.
- 8 Q. Now, what kind of advertising did Pierce consider
- 9 in his study? All forms of advertising?
- 10 A. Pierce measured advertising by asking them
- 11 questions about advertising. So he asked them if they
- 12 could recall advertising brand names associated with
- 13 advertising. He asked them if they had a favorite ad.
- 14 He asked them if they owned an article of clothing. So
- 15 he assessed their receptivity to advertising based on
- 16 their response to those questions.
- 17 Q. So he was really looking at a population that was
- 18 subject to the universe of tobacco advertising?
- 19 A. Correct.
- 20 Q. All right. And, in Burlington, what is being
- 21 discussed is removing one portion of that advertising
- 22 universe?
- 23 A. Correct.
- 24 Q. And you have postulated that, or it is your
- 25 opinion that one half of the advertising these kids are

PAGE 83

83

- 1 A. That's assuming they progress at the same rate
- 2 that these children in California progressed.
- 3 Q. Okay. We will get to that. But let's make that
- 4 assumption for now.
- 5 A. Yes.
- 6 Q. Have I interpreted this figure correctly?
- 7 A. Yes.
- 8 I actually think we should put another Burlington
- 9 column here.
- 10 Q. Okay.
- 11 A. Okay.
- 12 Q. This is going underneath?
- 13 A. This is going underneath, right?
- 14 Q. Right.
- 15 A. And it's the percentage of progression that
- 16 results from advertising that the Burlington effect
- 17 would eliminate. All right?
- 18 Q. Let me ask him to read what you said back.
- 19 (Answer read)
- 20 Q. Okay?
- 21 A. Okay. And it is the same for each item. It is
- 22 just this, it is 50 percent.
- 23 Q. Oh, okay.
- 24 A. Okay.
- 25 Q. You are saying 50 percent --

PAGE 82

82

- 1 subjected to is as a result of the type of advertising
- 2 that will be prohibited by the ordinance?
- 3 A. Correct.
- 4 Q. So if we want to take Pierce's study and apply
- 5 your view of the effect of the Burlington ordinance --
- 6 A. Yes.
- 7 Q. -- we would have to change the 5.6 to 10.1 and the
- 8 1.2, and not to the --
- 9 A. Correct.
- 10 Q. Would you mind if I wrote "Burlington" on here,
- 11 and then we can --
- 12 A. Sure.
- 13 Q. Okay. And I have written "Burlington," and,
- 14 underneath that, I would like you to put in what you
- 15 believe the effect of this ordinance will be.
- 16 A. Multiply by .5.
- 17 Q. I can almost do that in my own head. Cut
- 18 everything in half?
- 19 A. 5.06 here and 0.6 percent of the total population.
- 20 MS. OSKI: The first one is 2.8?
- 21 MR. BROW: 2.8.
- 22 Q. So it is your opinion that, as a result of the
- 23 advertising limitations in Burlington, .6 percent of
- 24 the children will not progress within a three-year
- 25 period to be regular smokers?

PAGE 84

84

- 1 A. It is just another way to look at it. If you look
- 2 at it this way, it makes this look like: No big deal.
- 3 And you look at it this way, and it looks like a
- 4 substantial effect. It really is a substantial effect.
- 5 The progression rate is low, so it looks like a small
- 6 amount that you are eliminating, but you are actually
- 7 eliminating 50 percent.
- 8 Q. Let me ask you to assume that we have got 1,000
- 9 children in this group in Burlington that would be
- 10 covered. Okay? What we are talking about is
- 11 eliminating .6 percent of that group, so how many
- 12 children would that be?
- 13 A. No. That is not right. It depends on your time
- 14 frame, okay? Let's say you take kids at -- say this
- 15 effect lasts -- you apply this effect through junior
- 16 high and high school, okay?
- 17 Q. Yes?
- 18 A. What happens between junior high and high
- 19 school -- between fifth grade, when only some kids have
- 20 tried smoking, and high school, when a lot of kids have
- 21 tried smoking, there is a big percentage change in the
- 22 amount of kids that have tried smoking, all right?
- 23 Q. Mm-hmm.
- 24 A. If we eliminate 50 percent of a third of that
- 25 change, it affects a substantial number of kids.

2065019981

PAGE 85 SHEET 22

85

- 1 Q. How many?  
2 A. Well, look at it this way. Let's flip the sheet  
3 and say, here you got the Burlington kids, a  
4 hypothetical sample of Burlington kids.  
5 Q. Yes. Would you put "page 2" up at the top?  
6 A. Yes.  
7 Q. Okay.  
8 A. Here is a hypothetical sample of Burlington kids,  
9 okay, 1,000 of them.  
10 Q. Right.  
11 A. They're in sixth grade. And let's assume we just  
12 pick all the nonsusceptible, never smokers, and they're  
13 all nonsusceptible, okay? These kids are going to go  
14 all the way through junior high and high school. And  
15 what our data suggest is that around 50 percent of  
16 those kids will have experimented with tobacco by high  
17 school, and around 10 or 15 percent will be regular  
18 smokers. Okay? So, say 500, by twelfth grade.  
19 Q. 500 what?  
20 A. Children.  
21 Q. That have --  
22 A. Have experimented. And 100 are regular smokers,  
23 kids that are going to go on to smoke for 30 years,  
24 until they get their smoking-related disease,  
25 Q. So about 20 percent of the ones who experimented

PAGE 87

87

- 1 we go back and look at this --  
2 A. We remember what we talked about.  
3 Q. Yes.  
4 Of that 500 that experiment, 100 will become  
5 regular smokers, right?  
6 A. Yes.  
7 Q. All right. And how do you define "regular  
8 smokers"?  
9 A. Daily smokers.  
10 Q. One-third of the 100 is due to advertising?  
11 A. The advertising effect.  
12 Q. So that gives us 33. And you are saying that half  
13 of that will be eliminated by the Burlington ordinance?  
14 A. By eliminating the storefront advertising. See,  
15 when it comes down to the end point that you seem to be  
16 most interested in, the kids who become regular  
17 smokers, of the 10 percent of kids that would become  
18 regular smokers, this will affect or will keep about 15  
19 percent of them.  
20 Q. No, not --  
21 A. 15 percent of the hundred, of the 15 of the  
22 hundred. Okay?  
23 Q. Half a third so, yes, about 15 percent.  
24 A. Yes.  
25 (Deposition Exhibit 12, Dr. Sargent's hand-drawn

PAGE 86

86

- 1 become regular smokers?  
2 A. Yes, if you follow them through high school.  
3 Q. Okay.  
4 A. Okay. Let's apply Pierce's statistics, right?  
5 One-third of these kids did that because of exposure to  
6 advertising, so you got --  
7 Q. One-third of 500 is 166, right?  
8 A. Is it 166? I'll take your word for it. You take  
9 half of that, and it's 84 kids, and it is half of that.  
10 Q. What you are saying is, 50 percent of the kids in  
11 Burlington will experiment. That gives you 500 kids  
12 that have experimented. One-third of those will do so  
13 as a result of advertising?  
14 A. Min-hum.  
15 Q. And --  
16 A. Half of that.  
17 Q. Half. Is that because of --  
18 A. Half of that will be eliminated by the Burlington  
19 ordinance.  
20 Q. Okay. So you would have 84 experimenters  
21 eliminated?  
22 A. Yes.  
23 Q. Do you mind if I put "eliminated" next to 84?  
24 A. Well, we are not eliminating them.  
25 Q. The problem is, I have to have something so, when

PAGE 88

88

- 1 diagram, one sheet, front and back, was marked)  
2 Q. I show you what is marked as Exhibit 12. Is that  
3 the document that you just prepared?  
4 A. Yes.  
5 Q. And that contains the numbers that we were talking  
6 about?  
7 A. Yes.  
8 Q. And on the back of that, there are some  
9 calculations, hypothetical calculations, with regard to  
10 Burlington?  
11 A. Yes.  
12 Q. And I believe you testified earlier that the  
13 50-percent figure was just your sort of ballpark  
14 estimate as to the amount of advertising attributable  
15 to activities precluded by the Burlington ordinance?  
16 A. Yes.  
17 Q. And in reaching that conclusion, you have  
18 considered the geographic proximity of parts of  
19 Burlington to other communities? In other words,  
20 Burlington abuts a number of other communities. It  
21 abuts Winoski, Colchester, South Burlington. And you  
22 have considered the effect that those surrounding  
23 communities not having a similar ban will have, right?  
24 In other words, the 50 percent is actually directly  
25 attributable to the Burlington ordinance?

2065019982

PAGE 89 SHEET 23

89

- 1 A. Yes. I mean, kids might go to the surrounding  
2 communities, but they don't go on a daily basis. Most  
3 kids don't. Most kids stay in their neighborhood on a  
4 daily basis. They go to their school, they come back  
5 home. So I don't think that the surrounding  
6 communities not having the ban is going to be a  
7 substantial contributor to the advertising the kids  
8 see. It will be a contributor, no question. I mean,  
9 they might go to -- what do you call it? -- Cosco, with  
10 their parents, and go by convenience stores in another  
11 town, on those kinds of trips.
- 12 Q. But you are aware, in parts of Burlington, it is  
13 only a block to another community?
- 14 A. It will affect the kids that live right on the  
15 edge of town, probably --
- 16 Q. Loss?
- 17 A. Right.
- 18 Q. And the ones that are in the center will be fully  
19 affected?
- 20 A. Will be more affected.
- 21 Q. And --
- 22 A. It would be better if we could just pass a state  
23 ordinance.
- 24 Q. It would eliminate a bunch of my questions. That  
25 might be better for all of us, I suppose.

PAGE 91

91

- 1 Kids do stuff despite what their parents wish them to  
2 do.
- 3 Q. Do you know what the average age of smoking  
4 initiation is?
- 5 A. The period where it's most -- that it increases  
6 the most is sixth to ninth grade. So if I had to guess  
7 on an average age, I'd say 13. Something like that.
- 8 Q. 11 to 14, somewhere in there?
- 9 A. Yes. 11 to 15, I'd say.
- 10 Q. Is it fair to say about virtually 100 percent of  
11 the children are exposed to ads?
- 12 A. It is.
- 13 Q. Okay.
- 14 A. Yes.
- 15 Q. To what do you attribute the fact that many do not  
16 become smokers?
- 17 A. Even though they are exposed to ads?
- 18 Q. Yes.
- 19 A. The other factors.
- 20 Q. Could you identify those other factors? Parents  
21 smoking?
- 22 A. Well, there are a lot of factors that are  
23 associated with smoking in children. And ones that  
24 have been most kind of commonly associated are tobacco  
25 advertising, peer smoking -- by that I mean, do any of

PAGE 90

90

- 1 Is it your testimony that the limitations  
2 contained in the Burlington ordinance will eliminate  
3 the desire on the part of these children to have  
4 cigarettes?
- 5 A. To the extent that it changes their -- it keeps  
6 them from adopting attitudes that make them susceptible  
7 to smoking.
- 8 Q. Don't most children think smoking is bad?
- 9 A. All children, just about, know that smoking is bad  
10 for you, for your health. Children don't adopt smoking  
11 with much concern about the health effects of smoking.
- 12 Q. Why is that?
- 13 A. Because some -- when they're adolescents, they  
14 tend not to think anything will ever affect their  
15 health. We deal with these kinds of issues all the  
16 time in the adolescent population. They don't engage  
17 in a lot of risk reduction behaviors because they feel  
18 invulnerable. They don't wear their seat belts because  
19 they think, even if they get in a crash, they wouldn't  
20 die.
- 21 Q. Don't most parents make their kids wear seat  
22 belts?
- 23 A. Most parents -- I never met a parent that didn't  
24 want their kids to wear seat belts, and I have never  
25 met a parent that didn't want their kids not to smoke.

PAGE 92

92

- 1 your friends smoke.
- 2 Q. Yes?
- 3 A. How well you do in school. Some attitudinal  
4 measures. Can you identify positive benefits to  
5 smoking? The more positive benefits you can identify,  
6 the more likely you are to smoke. Measures of  
7 rebelliousness. Measures of risk-taking and  
8 sensation-seeking. And socioeconomic status.
- 9 Q. What is the relationship there? The lower the  
10 socioeconomic status, the higher the likelihood of  
11 smoking?
- 12 A. Correct.
- 13 Q. And I assume, the worse you do in school, the more  
14 likely you are to smoke?
- 15 A. Correct.
- 16 Q. With respect to school and how well they do in  
17 school, what is the relationship between that and  
18 beginning to smoke?
- 19 A. You mean why does poor school performance predict?
- 20 Q. Yes.
- 21 A. We know that it predicts. Why it predicts is a  
22 matter of speculation. I can speculate based on what I  
23 know about kids. I think, with kids, poor school  
24 performance is really linked with poor self-esteem and  
25 the need to develop an image that bolsters that

2065019983

PAGE 93 SHEET 24

93

- 1 self-esteem in some other way.
- 2 Q. Did you think poor school performance causes kids
- 3 to start smoking?
- 4 A. It's one of the elements in the web of causation.
- 5 So I would imagine, if you had a group of kids who
- 6 performed poorly in school - All right?
- 7 Q. Yes.
- 8 A. - and you compared their response to cigarette
- 9 advertising to a group of kids that performed well in
- 10 school, that the poor performers would be more
- 11 responsive, because of the need to bolster their
- 12 self-esteem. To the extent to which the smoking image
- 13 does that for them, that it becomes a behavior that
- 14 gets them somewhere, it becomes an important behavior
- 15 for them.
- 16 Q. Well, do you think that smoking is - the smoking
- 17 is a product of the poor performance or -
- 18 A. When I say "the web of causation," there are a
- 19 whole bunch of factors that come together in any one
- 20 individual child. See, I can't -
- 21 Q. Segregate?
- 22 A. I mean, the best you can do is estimate, in a
- 23 population, what proportion of the smoking is primarily
- 24 due to an effect like advertising.
- 25 Q. Have you ever asked anyone, directly, why they

PAGE 95

95

- 1 in it for them. But they don't consciously think about
- 2 why they adopt.
- 3 Q. But has anyone ever indicated to you, "I started
- 4 because I saw some advertising?"
- 5 A. You mean: "I saw something and I started?"
- 6 Q. Yes, "I saw an ad and I started."
- 7 A. No.
- 8 Q. Or, "I saw a collection of ads and I started?"
- 9 A. No, but you wouldn't expect somebody to do that.
- 10 Q. Why not?
- 11 A. Because it is not - it is not a conscious thing.
- 12 Especially with an adolescent. An adolescent doesn't
- 13 want to believe that they did anything because of an
- 14 external factor. Adolescents really want to believe
- 15 everything they do, they do because it is primarily
- 16 motivated from within, it is kind of their individual
- 17 will.
- 18 Q. Well, when you diagnose someone, Doctor, don't you
- 19 rely on their reports as to how they feel, or, you
- 20 know, what problems they are having?
- 21 A. Sure. But I don't rely on their reports about the
- 22 causation of how they feel. I mean, there is a whole
- 23 area of medicine that is built around trying to
- 24 determine the causation of people's behaviors and their
- 25 aftereffects and their moods; it is psychiatry. And

PAGE 94

94

- 1 started to smoke?
- 2 A. Any adult, children, or -
- 3 Q. Anybody.
- 4 A. Sure.
- 5 Q. On how many occasions? A lot of occasions?
- 6 A. A lot. Because, in my practice, I see adults that
- 7 are addicted smokers, that are parents of the kids, and
- 8 I frequently will ask them, you know, what
- 9 circumstances did they first smoke their cigarette in,
- 10 you know, what kind of cigarettes did they first start
- 11 smoking, what kind of cigarettes do they smoke now. I
- 12 will ask a lot of questions like that.
- 13 Q. What are the responses as to why they started
- 14 smoking?
- 15 A. It was just part of what everybody did, kind of.
- 16 It was part of what everybody in their kind of network
- 17 did.
- 18 Q. Everybody in their peer group did?
- 19 A. Yes. And they didn't think about why they did it,
- 20 they just did it. And that is really the kind of
- 21 response you get from most people. They don't have a
- 22 lot of personal insight into why they adopt a behavior.
- 23 People don't analyze their behaviors that way. They
- 24 adopt the behaviors more because of kind of there being
- 25 some kind of an internal need - you know, something is

PAGE 96

96

- 1 psychiatrists don't say to people, "Why are you
- 2 depressed," psychiatrists talk to people about their
- 3 lives and try to figure out what circumstances have
- 4 come together in a certain person's life that results
- 5 in depression. People don't come to doctors and say,
- 6 "I'm depressed because." They say, "I feel really
- 7 bad." And the first thing the doctor has to do is
- 8 determine what the bad feeling is. And, once you know
- 9 it is depression, then you start asking them about the
- 10 events in their lives, about their family history, and
- 11 all of those factors are what you - what kind of come
- 12 into your diagnosis about why the person is depressed
- 13 at any one point in time.
- 14 Q. You wouldn't, as a starting point, say, "Why do
- 15 you feel depressed?"
- 16 A. No, because people don't have insight into it,
- 17 unless they have already been to psychotherapy. If you
- 18 talk to somebody who already has been to a therapist or
- 19 psychologist, they will tell you exactly why they are
- 20 depressed. That is because they have engaged in a
- 21 discussion with a psychologist. You might say, "Why
- 22 are you depressed?" "Well, I think it might be because
- 23 my girlfriend left me," or something like that.
- 24 Usually, when kids do a really dramatic event, say they
- 25 try to commit suicide, there is often a triggering

2065019984



PAGE 97 SHEET 25

97

- 1 factor, but there is an overlay that includes many  
 2 factors that causes the adolescent to be very depressed  
 3 before the triggering event comes up,  
 4 Q. Are you aware of any studies or polls that have  
 5 inquired of people, either adults or children, as to  
 6 the reason they began smoking?  
 7 A. No.  
 8 Q. Have you ever looked for such a poll or such a  
 9 study?  
 10 A. It wouldn't be a way that I would approach  
 11 studying that.  
 12 Q. Because you think it wouldn't be productive?  
 13 A. I don't think it would lead to an answer that -  
 14 Q. You could rely on?  
 15 A. Right.  
 16 Q. Are there any data with regard to smoking  
 17 initiation in Utah prior to the advertising  
 18 limitations?  
 19 A. I doubt there are good data, but I don't know for  
 20 sure.  
 21 Q. Are you aware of any other countries where  
 22 cigarette advertising has been banned or seriously  
 23 restricted?  
 24 A. Yes.  
 25 Q. And what countries would those be?

PAGE 98

98

- 1 Q. What was the experience in those countries?  
 2 A. The article that I read just stated that this is  
 3 what they did to get around the restriction. It didn't  
 4 say anything about smoking in children.  
 5 Q. What article did you read?  
 6 A. It is a - articles on smoking, kind of review  
 7 articles on smoking and advertising.  
 8 Q. Would you have expected to see a decline in  
 9 initiation of cigarette use by children as a result of  
 10 an advertising ban?  
 11 A. Yeah. I mean, I just said that I think there  
 12 would - it would happen in Burlington.  
 13 Q. If, in fact, smoking initiation stayed the same or  
 14 rose in Norway and Sweden, would that affect your  
 15 analysis?  
 16 A. No.  
 17 Q. Why not?  
 18 A. Because, as I just said, it's a whole different  
 19 situation, and I don't know, you know, what other  
 20 factors were at play during the time period in Norway  
 21 and Sweden, and you really have to know a lot of things  
 22 about what is going on in society, price of cigarettes.  
 23 I mean, there are a lot of factors that play into  
 24 initiation rates.  
 25 Q. One of the differences might be cultural

PAGE 99

99

- 1 A. Norway.  
 2 Q. All right.  
 3 A. Norway and Sweden are the two that come to mind.  
 4 Q. And what has been the effect in those countries?  
 5 A. I don't know, well enough, the data to comment on  
 6 that.  
 7 Q. Wouldn't that be a relevant thing to look at in  
 8 making a decision as to the effect of advertising?  
 9 A. I don't think as relevant as the individual  
 10 studies that are cited, that I have already cited, that  
 11 involve individual American children. I mean, there  
 12 are a lot of factors that go into trends in smoking,  
 13 and the factors differ from country to country and from  
 14 place to place. And all of those advertising  
 15 restrictions were different. For example, there was  
 16 some advertising restrictions in England - no, in  
 17 Belgium, and the response - they were similar to the  
 18 response of the Philip Morris company - was to place  
 19 the actual picture of the Marlboro cowboy on the  
 20 cigarette package to get around the restrictions. So  
 21 it depends on how effectively the companies get around  
 22 the restrictions. It depends on a whole lot of things.  
 23 So, I mean, I am just not sure - it is not nearly as  
 24 good a way to get at causation compared with an  
 25 individual study that follows children over time.

PAGE 100

100

- 1 difference, is that what you are suggesting?  
 2 A. Sure.  
 3 Q. If, in fact, Norway or Sweden went from a  
 4 situation where they had advertising to did not have  
 5 advertising, the cultural differences would not exist  
 6 would they? I mean, you have the same culture there  
 7 before as after.  
 8 A. Yeah. But who knows what proportion of youth  
 9 initiation is attributable to advertising in Norway or  
 10 Sweden. We don't have a Pierce study in Norway, we  
 11 don't have a Pierce study in Sweden, and we don't know.  
 12 Perhaps - if nobody finds an effect there, perhaps you  
 13 could have done a longitudinal study there, which is  
 14 similar to the one Pierce did, and find that  
 15 advertising has very little effect on initiation, that  
 16 there are other factors that loom larger, that play  
 17 bigger with that population. So just because it  
 18 doesn't work in another country doesn't mean it won't  
 19 work in this country.  
 20 Q. So what you are saying is, the fact that it hasn't  
 21 worked in other countries, assuming that to be the  
 22 case, has no impact on your analysis?  
 23 A. It doesn't have the kind of impact on my analysis  
 24 that a study like this has.  
 25 Q. By "this," you are once again referring to the

2065019985

PAGE 101 SHEET 28

101

- 1 Pierce study?
- 2 A. Doctor Pierce's article, yes.
- 3 Q. Are there any other ways to achieve the same goals
- 4 that the Burlington ordinance hopes to achieve? And I
- 5 would guess those are reducing underage smoking,
- 6 unlawful possession of tobacco, by children?
- 7 A. Sure.
- 8 Q. What other ways are there?
- 9 A. I mean, you could make it illegal to sell tobacco
- 10 in Burlington.
- 11 Q. It is illegal in the State of Vermont.
- 12 A. Couldn't they pass an ordinance in Burlington
- 13 making it illegal to sell tobacco there? I think they
- 14 tried to do that in a Massachusetts community.
- 15 Q. To sell it at all, to anybody?
- 16 A. Yes.
- 17 Q. Including adults?
- 18 A. Yes.
- 19 Q. Are you aware that Vermont has a statute that
- 20 precludes the sale of tobacco products to minors?
- 21 A. Yes.
- 22 Q. Most states have that?
- 23 A. All states have that.
- 24 Q. All states.
- 25 Would stricter enforcement of those laws reduce

PAGE 103

103

- 1 A. Yeah. So I would have to get the literature and
- 2 review the literature in order to give you an expert
- 3 opinion on that.
- 4 Q. So, at this juncture, you don't feel qualified to
- 5 give an expert opinion on stricter enforcement of laws
- 6 leading to a decrease in smoking or possession?
- 7 A. Yes.
- 8 Q. Okay. What about educational programs? Do you
- 9 believe that educational programs could achieve the
- 10 same goals as the Burlington ordinance hopes to
- 11 achieve? And, once again, I will indicate that that is
- 12 the reduction of smoking by minors, or possession of
- 13 tobacco by minors, the unlawful possession by minors?
- 14 A. The -- I know more about educational programs.
- 15 And the data in educational programs suggest that they
- 16 have about the same effect that we are postulating the
- 17 Burlington ordinance would have. The problem with
- 18 educational programs is that they're usually
- 19 implemented through schools, they are very costly, and
- 20 the state doesn't have the kind of money that it would
- 21 take to implement a statewide education program. You
- 22 are talking about tens of millions of dollars to
- 23 implement a program like that.
- 24 Q. Statewide?
- 25 A. Yes.

PAGE 102

102

- 1 minors' smoking and possession of tobacco products?
- 2 A. Well, that is in the category of decreasing
- 3 access. So it is playing on a different -- the
- 4 category we are referring to here is the category of
- 5 decreasing demand, all right?
- 6 Q. Yes.
- 7 A. So it is two separate categories. The studies
- 8 that have looked at restricting point of sale have
- 9 shown that number 1, that they're very labor-intensive
- 10 to enforce, and, number 2, that all it takes is one or
- 11 two vendors in an area that violate the law to -- you
- 12 know, the kids find out who the vendors are and they
- 13 just go there.
- 14 Q. What studies are those?
- 15 A. I would have to find them for you. Those aren't
- 16 in my file. I just know of those studies.
- 17 Q. Are you aware of any JAMA articles that indicate
- 18 that stricter enforcement of laws prohibiting sales to
- 19 minors is an effective way to reduce smoking or
- 20 possession of tobacco products by minors?
- 21 A. I think that it's an approach that has been tried.
- 22 My sense of it is that it has had limited effect. But
- 23 my knowledge of that area of tobacco control is much
- 24 more limited.
- 25 Q. Is very limited?

PAGE 104

104

- 1 Q. What about within the City of Burlington?
- 2 A. You are still talking about a very expensive
- 3 program. You are talking about an educator for every
- 4 couple of schools.
- 5 Q. Now, you said tens of millions of dollars. That
- 6 was for the State of Vermont, or are we just talking
- 7 sort of generally?
- 8 A. For the State of Vermont.
- 9 Q. Do you have any idea how many tens of millions of
- 10 dollars?
- 11 A. No. It would be a lot. I know it would be a lot.
- 12 You would have to have an army of educators. I mean,
- 13 the problem with these educational programs is that
- 14 teachers are already overwhelmed by what they are
- 15 teaching in the schools now. So, even if you give a
- 16 teacher a social influences curriculum, which is the
- 17 kind of curriculum which has been shown to work, they
- 18 don't usually implement it, don't usually teach it.
- 19 Q. Why is that?
- 20 A. Because they have math, they have science, and
- 21 they don't see it as something that -- number 1, it is
- 22 not part of their routine, and, number 2, the math,
- 23 science and everything else takes up all their time,
- 24 so in order to really get it taught, you have to,
- 25 number 1, pay for new educators to be in the system

2065019986

PAGE 105 SHEET 27

105

1 running the education programs, and, number 2, you have  
2 to convince elementary through high schools that they  
3 need to create time for that type of education. And I  
4 can tell you, having worked with elementary through  
5 high schools, that it is a very difficult sell for  
6 junior high and high schools, even if you have somebody  
7 teaching it, because the blocks of time are already  
8 taken up.  
9 Q. How much time is required to teach this?  
10 A. It's not a matter of teaching. It is a matter of  
11 being able to get a message out there and have kids  
12 internalize it and reinforce it over time. You see,  
13 the reason tobacco advertising is so effective is that  
14 it is continually reinforced, over and over, all the  
15 way through high school. So I could have an elementary  
16 school program and teach kids about advertising, but  
17 by high school, the effect of that program is gone. It  
18 doesn't have a lasting effect.  
19 Q. What I'm trying to get at is, what kind of  
20 educational program do you envision would be as  
21 effective as this banning of advertising?  
22 A. A statewide elementary through high school  
23 educational program, based on teaching children about  
24 the social influences of tobacco use.  
25 Q. Would such a program in Burlington be as effective

PAGE 107

107

1 isolated reports, but the teachers became very involved  
2 in the program, to the extent that there was a report  
3 that came back about a field trip to the state capital,  
4 and the people that were kind of monitoring the kids on  
5 the field trip were smoking, and the teacher said,  
6 "Hey, don't do that in front of our children."  
7 Q. You are talking about parent monitors?  
8 A. It was aides and the bus driver. So they actually  
9 became, you know, activists. But it was a two-year  
10 process.  
11 Q. But what I'm getting at is, were they trained  
12 sufficiently to sort of achieve the results that you  
13 would want in an educational program, or -  
14 A. Yeah.  
15 Q. Okay.  
16 A. Yeah. But they have to do that over time, right?  
17 Q. Yes.  
18 A. So, in order for that to last over time - see,  
19 you get rid of advertising. You make an ordinance, you  
20 get rid of it. It is gone, right? In order to  
21 implement an educational program, you have to be there  
22 in the school every year, or else the educational  
23 program dies. Our program will go away now that we  
24 are - our funding has stopped. And the teachers -  
25 you know, they might teach some next year, but they're

PAGE 108

108

1 as this ordinance will be in Burlington?  
2 A. Yes, I think it could be as effective.  
3 Q. What kind of program would you need to be as  
4 effective? Do you need like four hours a week from  
5 kindergarten through twelfth grade, or what kind of  
6 structure would you have?  
7 A. I would say you probably need more like four hours  
8 a month.  
9 Q. Okay.  
10 A. From kindergarten to twelfth grade.  
11 Q. Would there be specialized training required of  
12 the person who is running the program?  
13 A. Oh, yeah.  
14 Q. Something beyond your sort of -  
15 A. Most educators don't understand the social  
16 influences of tobacco use. They don't understand about  
17 tobacco marketing. One of the things we found with our  
18 program was that the teachers became much better  
19 advocates against smoking because they learned so much  
20 about tobacco use and its uptake in kids. But it was a  
21 two-year process of teaching the teachers about that.  
22 Q. And that study that you did, you were able to  
23 educate the teachers to be effective anti-smoking  
24 advocates, if you will?  
25 A. The teachers - this is mainly just, you know,

PAGE 109

109

1 not going to keep teaching what we taught them to  
2 teach.  
3 Q. If funding is cut off?  
4 A. Right. So continued funding in K through 12 is  
5 like - that's the issue. That's the issue that makes  
6 it a nonstarter.  
7 Q. But if you were to have that funding, then you  
8 would not necessarily need an ordinance like this -  
9 A. It is not different. I mean, they both -  
10 Q. They both work towards the same goal?  
11 A. Yes. It is just like: You eliminate storefront  
12 advertising. You still, in order to cut smoking rates  
13 in adults, have to limit the places in public places  
14 where people can smoke. So all of those kinds of  
15 ordinances have beneficial effects, and they are  
16 additive effects. You can't say a school-based program  
17 would replace the effect. It would have a similar  
18 effect. If you eliminated both, it would probably have  
19 an additive effect; if you did both, it would probably  
20 have an additive effect.  
21 Q. It could have an effect similar in size to what  
22 the ordinance would?  
23 A. Yeah. But it is not working at the same level. It  
24 is kind of countering. You basically have to have it  
25 in place, because you have to counter the stuff that is

2065019987

PAGE 109 SHEET 28

109

1 in the stores.  
2 Q. Isn't there a value to the educational program  
3 beyond that which is presented by the restrictions on  
4 advertising, in that, with the educational program, the  
5 children, as they grow up, carry this knowledge with  
6 them, as opposed to the advertising restrictions,  
7 which, when they go to Colchester, all of a sudden they  
8 are subject to advertising? Isn't there an advantage  
9 to the educational program, over and above what they  
10 would get by this advertising restriction?  
11 A. You know, I think that, basically, what you are  
12 suggesting is that, you know, we have a legal product  
13 that kills people, and that we should let the companies  
14 advertise the product and teach children to not be  
15 responsive to that advertising. And I would suggest to  
16 you that a much more efficient way of dealing with it  
17 is to eliminate the advertising. I think you could  
18 make the argument that kids could -- you know, that if  
19 you teach kids about advertising, it could help them in  
20 a lot of areas.  
21 Q. Yes?  
22 A. And I think they should be taught about  
23 advertising. But I don't think -- you know, you take  
24 away smoking advertising, I still think they should be  
25 taught about advertising, because it is such a big part

PAGE 111

111

1 City of Burlington should raise the money to educate  
2 kids about the tobacco marketing in the stores so that  
3 vendors can keep making money showing the stuff that  
4 the cigarette companies give them. It just doesn't  
5 make a lot of sense to me.  
6 Q. As I said before, or as I asked you before, you  
7 don't have any idea what such a program, four hours a  
8 month, would cost in Burlington?  
9 A. I can tell you how much our program cost.  
10 Q. But your program is a little different.  
11 A. It involved evaluation, which was a contributor to  
12 the cost, but half of the program was implementing the  
13 program.  
14 Q. How much was paid to the school systems for  
15 performing the program?  
16 A. But we hired an educator to be in there teaching  
17 the teachers, right?  
18 Q. Okay.  
19 A. It wasn't just a matter of paying the school  
20 systems, it was matter of paying the school systems for  
21 the teachers to take the time to do training and  
22 whatnot, and paying an educator, full-time, to be in  
23 the schools, making sure that the curriculum got  
24 implemented. The program cost \$1 million for two  
25 schools for two years.

PAGE 110

110

1 of our existence, our day-to-day life.  
2 Q. But what I was getting at is that, if you educate  
3 someone about something, that is something they can  
4 carry with them. Restricting advertising in Burlington  
5 only applies when the kids are in Burlington. So isn't  
6 there an advantage to the educational program?  
7 A. Instead of restricting?  
8 Q. Or in addition to restricting. Over and above, if  
9 you were to compare the two?  
10 A. Sure. Yeah. No question.  
11 Q. Okay.  
12 A. But to say you should educate in place of the  
13 restriction is not -- it is not a reasonable way to go.  
14 Q. What I'm talking about is the comparative value of  
15 the two things, that there may be more value in the  
16 education than in the restriction.  
17 A. Well, I think, in terms of comparative value, you  
18 have to look at the cost of both things. The costs of  
19 the educational program is enormous. The cost of  
20 restricting advertising to the City of Burlington is  
21 nil. The cost to your clients is fairly large, because  
22 they're paid a lot of money to exhibit that  
23 advertising. So it is --  
24 Q. Well, it is a switching of societal costs, then?  
25 A. Well, it is saying that the state of -- that the

PAGE 112

112

1 Q. How much of that went to the educator, the one who  
2 is teaching the teachers?  
3 A. 45,000. Maybe, 40,000, 38,000 plus fringe.  
4 Q. For one year?  
5 A. Per year for two years.  
6 Q. Per year for two years?  
7 A. Yes.  
8 Q. How many teachers were being educated?  
9 A. Ten. Ten, twelve. Something like that.  
10 Q. Was this a full-time job for this educator?  
11 A. Yes.  
12 Q. Maybe I am missing something here. Did that  
13 educator spend full time for two years teaching these  
14 ten or twelve teachers?  
15 A. No. She spent full time motivating them to do the  
16 curriculum. That was the hardest part. Taking  
17 teachers whose daily life was full of reading, writing,  
18 arithmetic, and all the other stuff they had to teach,  
19 and saying, "Please insert this other thing where you  
20 are going to work. Number 1, it is going to be a  
21 different kind of teaching, because, instead of  
22 standing up in front of the kids and telling them  
23 stuff, you are going to ask the kids to work as groups,  
24 to brainstorm their own ideas, so trying to get  
25 teachers to think about education in a whole different

2065019988

PAGE 113 SHEET 28

113

- 1 way than what they were used to. It was a lot of work.  
2 Q. This one person did not have constant meetings for  
3 two years with ten or twelve teachers, did she?  
4 A. She went to each school once a week, and pretty  
5 much connected with all the teachers. She was in  
6 communication by E-Mail with the teachers, and got  
7 numerous messages every week - questions about the  
8 program, complaints, this and that. She - you know,  
9 teachers would request materials, things like that.  
10 She would get them and bring them in. It was a  
11 substantial effort.  
12 Q. That was not designed to reduce smoking, or was  
13 it?  
14 A. It is designed to - the first year was designed  
15 to talk to kids about smoking uptake and trying to get  
16 them to address that issue. The second year was trying  
17 to get them to address the issue of cessation among  
18 their peers and parents.  
19 Q. So we don't know yet whether that has been  
20 effective or not?  
21 A. We hope it has been effective. It was a lot of  
22 work. It was two years of my life, which, if it is not  
23 effective, will be -  
24 Q. Will be a waste?  
25 A. I will have learned something, but it will make me

PAGE 115

115

- 1 A. See, the training is not as big an issue as the  
2 motivating. You could train the teachers to do the  
3 program in a couple of working sessions, right?  
4 Q. Yes.  
5 A. Where you said, you know, Here is the program,  
6 here is how it works, we want the kids to work on  
7 stuff, and we want you to just be their mentors, and  
8 they're going to connect with medical students over  
9 E-Mail. And so you can explain the program to them.  
10 Q. Yes?  
11 A. But that wouldn't mean that they would implement  
12 it.  
13 Q. That particular program involves a lot more than  
14 just tobacco?  
15 A. No.  
16 Q. It only involves tobacco?  
17 A. Just tobacco.  
18 Q. Is this the Keep Doc Health Quest?  
19 A. The Coop Docs are the medical students.  
20 Q. So it is the motivation of these teachers that  
21 really became, or was, fairly expensive?  
22 A. Well, that's the reason that educational programs  
23 have failed in the past, right, that people have not  
24 been able to motivate teachers on a large scale to  
25 teach those programs. We have had programs that have

PAGE 114

114

- 1 feel a lot better if it's effective.  
2 Q. Of that \$1 million, was any payments made directly  
3 to the school for their time, teacher time?  
4 A. Yes. For example, if the teachers came to a  
5 training session, we would pay them, outside of school  
6 time, to be part of the training session. We would  
7 have to rent space. For example, we would pay them for  
8 the use of their facilities for the tournament that we  
9 would have, so - we would have, you know, a tournament  
10 at the end of the year, similar to the Odyssey of the  
11 Mind tournament.  
12 Q. Right. What I am getting at is, you have \$1  
13 million and ten teachers. The average cost to educate  
14 each teacher could not have been \$100,000.  
15 A. No, it wasn't. This went into creating the  
16 materials, developing the materials, printing the  
17 materials. So part of it was up-front development  
18 costs for the developing the problems, creating the  
19 program.  
20 Q. Do you have any sense as to how much training -  
21 A. I have a sense as to how much it would cost to run  
22 the program for a couple of years.  
23 Q. Let me ask, do you have any sense as to how much  
24 it would cost to train a teacher to be able to do the  
25 program?

PAGE 116

116

- 1 been shown to work for ten, twenty years, but no one  
2 has figured out how to implement them. What has  
3 happened is, as people have gotten audacious to implement  
4 them in a few school districts, they have shown they  
5 worked, and then have gone to implement them statewide,  
6 and have fallen on their face, because they couldn't  
7 get teachers to buy into teaching them on a large  
8 scale. So it is a very difficult proposition to talk  
9 about implementing it on a large scale, and nobody has  
10 got the answer to that right now.  
11 Q. As I understand, what you are saying is, the basic  
12 problem is the teachers have a full day, and they don't  
13 want to add anything else into it, and that's the  
14 reason that the programs are failing.  
15 A. Right. I mean, we have the curriculum. Teachers  
16 just don't teach it.  
17 Q. What about increasing prices? Do you think that  
18 would affect it? If there were some sort of an  
19 additional tax imposed on cigarettes, would that have  
20 the same effect as the Burlington city ordinance?  
21 A. I don't have enough knowledge of price elasticity  
22 to know. There are some economists who think it will,  
23 there are some that don't.  
24 Q. That is not your field?  
25 A. That is not my field.

2065019989

PAGE 117 SHEET 30

117

- 1 Q. Do you know, has the AMA ever published any  
2 literature on that subject?  
3 A. If they have, I don't know of it. I think most of  
4 that literature is economics, you know, economists and  
5 econometricians, so I think it is more an economics  
6 literature.  
7 Q. Doctor, I notice one of your studies in progress  
8 has to do with films.  
9 A. Yes.  
10 Q. And what is that? You are evaluating films?  
11 A. Film as a factor that kids could be exposed to,  
12 that could change their attitudes about smoking.  
13 Q. Well, are we talking about antismoking films, or  
14 are we talking about --  
15 A. Hollywood films.  
16 Q. Okay. Have you reached any conclusions as to the  
17 effect of films on smoking?  
18 A. No.  
19 Q. Too preliminary?  
20 A. It has only been -- the study has only been going  
21 for a year.  
22 Q. Assuming that there is some correlation shown  
23 between smoking and possession of tobacco products in  
24 films, would you advocate restricting films from  
25 showing that, showing people smoking?

PAGE 119

119

- 1 smoking could be a background character, in the  
2 background, in a bar. Or how do you code a bar where  
3 nobody is smoking, but there is a lot of smoke all  
4 around? Or how do you code it when -- I mean, is it  
5 different when somebody smokes compulsively, out of  
6 habit, from somebody who smokes before sex? Is it  
7 different when somebody smokes in the context of  
8 violence and excitement versus when somebody smokes in  
9 a very quiet and tranquil scene?  
10 What we are most interested in, as with  
11 advertising, is the associations that there are with  
12 smoking. What is smoking associated with in film? Is  
13 it associated with, you know, tough male figures? Is  
14 it associated with romantic male figures? And then the  
15 second part of the study is: Which adolescents respond  
16 to which figures?  
17 Q. Then are you going to try to draw some connection  
18 between what they see and the initiation of smoking?  
19 A. Yes. That would be the ultimate goal of the  
20 study.  
21 Q. Will that be completed in that study, or is that a  
22 subsequent study?  
23 A. It should be completed in the study. It is a  
24 four-year study. Or at least we may have  
25 cross-sectional data.

PAGE 118

118

- 1 A. That's a whole different area of speech. It is --  
2 I don't think that is commercial speech. So I don't --  
3 I mean, I'm not a First Amendment specialist, but that  
4 is artistic speech, and a whole different ball of wax.  
5 My goal in the study. If there is a link, is to bring  
6 that to the film industry and try to convince them that  
7 it is not a good thing to show.  
8 MR. BROW: Off the record.  
9 (Discussion off the record)  
10 Q. So what you are doing in that study is, you are  
11 just trying to determine whether there is some  
12 connection?  
13 A. Well, the first thing that we are doing is, we are  
14 just trying to find out or figure out a way to  
15 consistently and objectively describe smoking in films.  
16 That has been a very difficult undertaking.  
17 Q. Why is that difficult? If somebody is holding a  
18 cigarette and puts it to their mouth, they would be  
19 smoking, wouldn't they?  
20 A. That's true. But there are a variety of different  
21 ways that cigarettes appear in films. You have  
22 significant signs and logos appearing in films in the  
23 background, without any smoking in the foreground. You  
24 have people mentioning smoking without any smoking  
25 being present. You have people smoking, and the person

PAGE 120

120

- 1 Q. Okay. At this point, you don't have any data from  
2 which to draw, really, any conclusions that would be  
3 germane to this case?  
4 A. There is no published -- we don't have any  
5 published data.  
6 Q. Well, I didn't ask if you had any published data,  
7 I asked if you had any data --  
8 A. We have data from a cross-sectional study which  
9 shows that there is an association over and above the  
10 association between advertising and smoking. It  
11 certainly doesn't cancel the association between  
12 advertising and smoking, but there seems to be a  
13 separate, but it is very preliminary and it is  
14 cross-sectional.  
15 Q. At this point you would be unable to state that  
16 what they see in film causes them to begin to smoke?  
17 A. Correct.  
18 Q. Earlier, we were talking about some photos that  
19 were in Kerry's Kwik Stop. I believe that you  
20 indicated that the massive advertising that was set  
21 forth in that picture could induce kids to smoke; is  
22 that correct?  
23 A. I think I said that, yes.  
24 Q. And I think I had asked you if there was any  
25 particular sign, and you indicated that there was no

2065019990

PAGE 121 SHEET 31

121

1 particular sign that caused that, it was sort of the  
2 totality of the situation?  
3 A. The summation, yes.  
4 Q. Is there a difference between 'summation' and 'the  
5 totality'?  
6 A. I don't think so.  
7 Q. Okay.  
8 What about the smokeless tobacco sign? Does that  
9 encourage children to use smokeless tobacco?  
10 A. That's been much less well studied than smoking,  
11 but smokeless tobacco trends have been up, and those  
12 trends are associated with a much higher dollar amount  
13 spent by the companies promoting the product. We don't  
14 have the kinds of studies on smokeless tobacco that we  
15 have on uptake of cigarette smoking.  
16 Q. Okay.  
17 A. But I - I mean, based on what we know about  
18 cigarettes, I would think it would be a factor.  
19 Q. Do you know the percentage increase in the sales  
20 of smokeless tobacco that you say is associated with  
21 this advertising campaign?  
22 A. I don't - I wouldn't want to cite any figures. I  
23 know it has gone up, but I don't know how much or what  
24 the baseline was.  
25 Q. Does the same correlation exist with respect to

PAGE 123

123

1 A. No. It showed a very specific increase during  
2 those years among adolescent females, that wasn't seen  
3 in males.  
4 Q. Do you happen to remember what the figures were,  
5 how much the female rate of smoking increased?  
6 A. Do you want me to get the article?  
7 Q. Yeah, actually, we could.  
8 A. Okay.  
9 (Recess)  
10 THE WITNESS: Do you want to submit  
11 this?  
12 MR. BROW: Yes, we will get it marked as  
13 an exhibit.  
14 (Deposition Exhibit 13, "Smoking Initiation by  
15 Adolescent Girls, 1944 through 1988," by John P.  
16 Pierce, et al., was marked)  
17 Q. Doctor I'm going to show you what has been marked  
18 as Exhibit 13. It's an article from the Journal of the  
19 American Medical Association entitled "Smoking  
20 Initiation by Adolescent Girls, 1944 through 1988."  
21 The lead author is John Pierce. And you have indicated  
22 that that article stands for what proposition?  
23 A. The idea that trends in initiation coincide with  
24 targeted advertising to certain groups.  
25 Q. And it showed an absolute increase in the

PAGE 122

122

1 cigarettes, that strong advertising campaigns or big  
2 advertising campaigns has translated into increased  
3 consumer demand?  
4 A. Yes.  
5 Q. And what studies reflect that?  
6 A. The Pierce study.  
7 Q. The '98 one?  
8 A. No. It is another one.  
9 Q. Is that the one, adolescent girls from 1944 to  
10 1988, or whatever?  
11 A. Yes. That would be kind of the best example of  
12 that kind of a study.  
13 Q. Did that show an actual increase in total smoking  
14 initiation?  
15 A. It showed an increase in initiation among girls  
16 younger than 18, that coincided with the introduction  
17 of female brands, such as Virginia Slims in 1967.  
18 Q. But did it show an increase in the total number of  
19 people smoking or experimenting with smoking?  
20 A. Yeah.  
21 Q. It showed an increase in females purchasing  
22 certain types of brands?  
23 A. Yes.  
24 Q. But it also showed a spike in total smoking by the  
25 public? Do you understand what I am -

PAGE 124

124

1 Initiation rate among women?  
2 A. During the period 1967 to 1988, which is a period  
3 when the sales of women's brands increased  
4 substantially, initiation among women aged 14 to 17  
5 increased substantially and significantly, whereas  
6 initiation among older women did not increase, and  
7 initiation among men actually declined.  
8 Q. Are there any other studies that you are aware of  
9 that show a direct correlation between advertising and  
10 increasing sales?  
11 A. There are a number of studies that show - that  
12 look at market share of Camel during the course of the  
13 Joe Camel -  
14 Q. But are there any studies that show - I'm sorry.  
15 That question was badly phrased for the information I  
16 was trying to talk about.  
17 I'm not interested in brand share. What I am  
18 interested in is whether you are aware of any studies  
19 that indicate that advertising campaigns increase the  
20 total market.  
21 A. Among adolescents?  
22 Q. Among anybody, other than this one article that  
23 you have referred to.  
24 A. That's an interesting question. And I don't know  
25 the answer to it.

2065019991

PAGE 125 SHEET 32

125

- 1 Q. It has only been four hours. I figured I would  
2 got one that was interesting before the day was over.  
3 A. I don't know the answer to that one.  
4 Q. Okay.  
5 A. I could look, if you think it is important.  
6 MS. OSKI: Could you read back the  
7 question?  
8 (Question read)  
9 A. Actually, the answer is: I know of at least one  
10 other article.  
11 Q. Which one is that?  
12 A. Another one by Pierce. It looks historically at  
13 trends in smoking, and shows that smoking uptake among  
14 women corresponded to advertising campaigns directed at  
15 women in their 30s to 40s.  
16 Q. Do you by any chance remember the name of that  
17 article?  
18 A. Do you want me to get it?  
19 Q. Yes.  
20 (Recess)  
21 (Deposition Exhibit 14, "A Historical Analysis of  
22 Tobacco Marketing and the Uptake of Smoking by Youth in  
23 The United States: 1880-1977," by John Pierce, et al.,  
24 was marked)  
25 Q. Doctor, let me show you what is Deposition Exhibit

PAGE 127

127

- 1 article purports to prove?  
2 A. Yes.  
3 Q. Doctor, can you describe for me how it shows that  
4 cigarette advertising leads to smoking initiation?  
5 A. Are you -  
6 Q. As opposed to just showing a statistical  
7 association between the two?  
8 A. It shows that receptivity to advertising and  
9 promotion precedes actual smoking, so it shows that  
10 there is a directionality to the association supporting  
11 causation.  
12 Q. And in what way does it show that the receptivity  
13 precedes the actual smoking?  
14 A. By surveying children in 1993, when they had never  
15 puffed on a cigarette, about their receptivity to  
16 advertising and promotion, and then surveying them  
17 three years later about their smoking behavior, and  
18 showing that receptivity in 1993 is associated with  
19 smoking in 1996.  
20 Q. How does it prove that the advertising, though, in  
21 fact, is a cause of the smoking activity three years  
22 later?  
23 Are you having difficulty understanding my  
24 question?  
25 A. Causation, as I said before, is not something that

PAGE 126

126

- 1 14.  
2 A. This is the other trend study that I was referring  
3 to called "A Historical Analysis of Tobacco Marketing  
4 and the Uptake of Smoking by Youth in The United  
5 States, 1880 to 1977," John Pierce, lead author.  
6 Q. And you were referring to that for the proposition  
7 that tobacco marketing practices were directly  
8 correlated to an increase in the market?  
9 A. Yes, or an increase of initiation or uptake.  
10 Q. Let me go back where we were when we took the  
11 break. I asked you a series of questions about Kerry's  
12 Kwik Stop. I would like to ask you some questions  
13 about Old North End Variety.  
14 (Deposition Exhibits 15 through 21, each a  
15 photograph of Old North End Variety, was marked)  
16 (Lunch recess)  
17 Q. Doctor, I show you what that been marked as  
18 Deposition Exhibit 3, the 1996 Pierce article we have  
19 been talking about.  
20 Yes?  
21 A. Yes.  
22 Q. I have read the article. It appears to me to  
23 stand for the proposition that receptivity to  
24 promotional activities is strongly related to  
25 progression. Is that a fair summary of what the

PAGE 128

128

- 1 is proven by any one individual study, but by a  
2 summation of cross-sectional longitudinal studies,  
3 showing that the results of those studies line up with  
4 theory, that it makes sense from what we know about  
5 adolescents, and showing that those associations are  
6 replicable in a number of different populations. So,  
7 just as you can't point to one advertisement in a store  
8 and say that that caused a kid to smoke, you can't  
9 point to any one study and say that that study shows  
10 definitively that there is causation. The way you  
11 begin to be able to talk about causation is, you show  
12 that there is a cross-sectional association, you show  
13 that there is a longitudinal association, you show that  
14 those associations aren't confounded by other things  
15 that are linked with smoking.  
16 And, by "confounded," I mean simply this. Let's  
17 say that cigarette promotional items were just a marker  
18 of having a friend that smokes. All right?  
19 Q. Yes.  
20 A. And we didn't measure friends smoking, and so we  
21 show there is an association between promotional  
22 activities and smoking, but, because we didn't control  
23 for friends smoking, we are actually just picking up  
24 friends smoking by measuring promotional items. So,  
25 what all these cross-sectional and longitudinal studies

2065019992



PAGE 129 SHEET 33

129

1 have shown it, not only is there an association between  
2 receptivity to advertising and smoking, and not only is  
3 the association directional - that is, exposure to the  
4 advertising and marketing and the receptivity precedes  
5 the smoking - but it shows that it is not confounded  
6 by other factors. It shows that, even when you control  
7 for the effects of other factors, that advertising is  
8 still a very significant and important element in  
9 multivariate analysis.  
10 Q. Do any of the studies exclude the possibility that  
11 the subjects were interested in smoking, and then paid  
12 more attention to the advertising? In other words,  
13 flipping it around, instead of the advertising sparking  
14 the interest in smoking, do any of them exclude the  
15 possibility, in some fashion, that these people were  
16 becoming interested in smoking for other reasons, and  
17 then paid more attention to the advertising?  
18 A. If they were interested in smoking in 1993, they  
19 wouldn't have made it into the study, because they  
20 would have had attitudes already present which would  
21 predict susceptibility to smoking. Okay?  
22 So the kids, in 1993, had to answer all these  
23 three questions as "definitely not." You ask them if  
24 they would smoke if a friend would offer them a  
25 cigarette. They had to say, definitely not. You ask

PAGE 131

131

1 none of whom had attitudes which would predict smoking  
2 in the future, all of them which answered "definitely  
3 not" to that question, but some of whom had cigarette  
4 promotional items, some of whom had a favorite  
5 advertisement. Okay?  
6 Q. Yes.  
7 A. So the advertisement came before the attitude. It  
8 was the way the study was designed, to show that the  
9 advertising precedes the attitudinal formation.  
10 Q. What you are saying Pierce had was a bunch of  
11 kids - 1,752, I believe?  
12 A. Yes.  
13 Q. - all of whom were nonsmokers, never smokers,  
14 nonsusceptible?  
15 A. Never puffed on a cigarette, and answered  
16 "definitely not" to those three questions.  
17 Q. And you are saying that all of those children were  
18 essentially equal for purposes of the study?  
19 A. For the purposes of how attracted they were to  
20 cigarette smoking.  
21 Q. Right?  
22 A. That they were all starting at the same place.  
23 All of them were not attracted to cigarette smoking.  
24 Q. Some of those 1,752 had promotional items?  
25 A. Yes.

PAGE 130

130

1 them if they think they are going to smoke in the next  
2 year. They had to say, definitely not. You ask them  
3 if they think - Do you think you will by cigarettes  
4 soon? If one of your best friends offered you a  
5 cigarette, would you smoke it? And, at any time in the  
6 next year, do you think you will smoke a cigarette? If  
7 they didn't answer "definitely not" to all three of  
8 these questions, they weren't even included in the  
9 sample in 1993. So these were kids who, at baseline,  
10 showed no interest in, no evidence of being interested  
11 in cigarette smoking.  
12 Q. But we have a three-year period before the  
13 follow-up, is that correct, in Pierce's?  
14 A. Yes.  
15 Q. How do we know that, within this three-year  
16 period, these kids didn't become interested in smoking  
17 and then focus more on the advertising?  
18 A. Because we measured the advertising at the same  
19 time we measured whether they were susceptible to  
20 smoking at baseline.  
21 Q. What do you mean?  
22 A. We asked them if they had a favorite ad. They  
23 asked them if they had a favorite ad in 1993. They  
24 asked them if they owned a cigarette promotional item  
25 in 1993. So what you had in 1993 was a sample of kids.

PAGE 132

132

1 Q. Some had a favorite ad?  
2 A. Yes.  
3 Q. And the initiation rate among the ones who had the  
4 promotional items and a favorite ad was greater than  
5 among the ones who did not have a favorite ad or a  
6 promotional item?  
7 A. Yes.  
8 Q. Were they able to control for family influences -  
9 A. Yes.  
10 Q. - with these kids?  
11 A. Yes.  
12 Q. Let me finish the question.  
13 With family influences existing in 1993?  
14 A. Yes.  
15 Q. Of the 1,752, do you know how many had families  
16 who had smokers in them?  
17 A. 50 percent were exposed to family smoking.  
18 baseline.  
19 Q. And how many had peers who smoked?  
20 A. 50 percent.  
21 Q. Both had 50 percent?  
22 A. Yeah.  
23 Not necessarily. I mean, if you said who had  
24 family and peer smoking, it is probably less than 50  
25 percent. So 50 percent had family smoking in

2065019993

PAGE 133 SHEET 94

133

- 1 isolation, and 50 percent had peer smoking in
- 2 isolation.
- 3 Q. And can you tell how many of them -
- 4 A. You know what?
- 5 Q. What?
- 6 A. That is incorrect. I'm looking at - I am
- 7 misinterpreting the percentages on this table. That is
- 8 not correct.
- 9 Q. What page is this? 513?
- 10 A. Yes. I was looking at table 2.
- 11 Q. Page 514.
- 12 A. And table 2 is the percentage that progressed
- 13 toward smoking who had family smoking. It doesn't say
- 14 the percentage that had family smoking. Let me see if
- 15 I can find it. He may have it. He may not.
- 16 He doesn't say. I don't think.
- 17 Q. He doesn't say what?
- 18 A. He doesn't say - he doesn't describe how
- 19 prevalent family smoking was among the population at
- 20 baseline.
- 21 Q. Among the total population?
- 22 A. Yes. Among the 1,700 kids.
- 23 Q. Isn't that what table 2 says?
- 24 A. No, it doesn't.
- 25 Q. It says "Exposure to Familial Smoking"?

PAGE 135

135

- 1 exposure was.
- 2 Q. Can we tell which of these children were
- 3 rebellious in any way? Is that information given?
- 4 A. It is not. He didn't include that in the model.
- 5 Q. Can we tell which of the children did poorly in
- 6 school?
- 7 A. We can't tell. But he included it in his - in
- 8 the model, so the effect of exposure to cigarette
- 9 promotions is controlled for the effect of poor school
- 10 performance.
- 11 Q. Where does it indicate that, though?
- 12 A. It says, below table 2, so this effect is adjusted
- 13 for this effect, this effect, age, sex, race and
- 14 ethnicity and school performance. If he had adjusted
- 15 it for rebelliousness, he would have included
- 16 rebelliousness down here.
- 17 Q. What is an adjusted odds ratio?
- 18 A. It is a way of determining whether there is
- 19 confounding or not.
- 20 Q. What is confounding?
- 21 A. Confounding - I explained it before.
- 22 Q. Well -
- 23 A. It is, if you have a factor like smoking -
- 24 Q. Yes?
- 25 A. - all right, and there are all these factors that

PAGE 134

134

- 1 A. Right.
- 2 Q. And talking about 1993?
- 3 A. Yes, but what it says is that, of the ones that
- 4 were exposed - and he doesn't say how many there
- 5 were - 53 percent progressed toward smoking. Of the
- 6 ones who weren't exposed, 45 percent progressed towards
- 7 smoking. I mean, I guess the take-home message is,
- 8 even though we can't tell how many were exposed, the
- 9 effect size is pretty small. That is, I mean, compared
- 10 to ones that aren't exposed to peer smoking, only 4
- 11 percent more progressed, 48.7 versus 52.7.
- 12 Q. Table 2 talks about exposure to peer smoking, and
- 13 it says almost 48 percent who were exposed to peer
- 14 smoking did not progress, right?
- 15 A. Right. No.
- 16 Q. No?
- 17 A. I don't know. What this table says is that, of
- 18 those that weren't exposed to peer smoking, okay, 48.7
- 19 percent progressed towards smoking over the three-year
- 20 period.
- 21 Q. The "no" doesn't refer to exposure to peer
- 22 smoking, it refers to -
- 23 A. They were not exposed - of those that were
- 24 exposed to peer smoking, 52.7 progressed. It doesn't
- 25 give numbers, so you can't tell how prevalent the

PAGE 136

136

- 1 may play into this smoking, right? It is a way of
- 2 showing that, what you are finding in the - you find a
- 3 link between advertising and smoking, say. It is a way
- 4 of showing that that is really an advertising effect.
- 5 and it is not just picking up a link between
- 6 advertising and peer smoking, and smoking. So the way
- 7 you do that is to do a thing called logistic regression
- 8 analysis. It is a multivariate statistical technique
- 9 to control for confounding. It is a very
- 10 well-accepted -
- 11 Q. Statistical?
- 12 A. A statistical technique.
- 13 Q. I knew I should have stayed in statistics at some
- 14 point.
- 15 A. So it is a way of being able to isolate the effect
- 16 of tobacco, independent of the effect of all the other
- 17 things. Another way of saying, in this finding, if all
- 18 other things being equal, this and all these factors
- 19 being equal, here is the effect of advertising.
- 20 Q. Did he adjust, do you know, for socioeconomic
- 21 status?
- 22 A. Only to the extent that race and ethnicity and
- 23 school performance adjusts for that.
- 24 Q. So the answer is: Not directly?
- 25 A. I mean, how do you adjust for socioeconomic

2065019994

PAGE 137, SHEET 25

137

- 1 status? You adjust for -
- 2 Q. Income?
- 3 A. - education, income, occupation.
- 4 Q. Right.
- 5 A. So he didn't adjust for education level of the
- 6 parents, he didn't adjust for income level of the
- 7 parents, and he didn't adjust for occupation of the
- 8 parents. Race is also a way to measure socioeconomic
- 9 status. It is not as exact as income. But, in
- 10 general, blacks and Hispanics have lower incomes than
- 11 whites.
- 12 Q. Did you indicate, at one point, that socioeconomic
- 13 status was a major determinant of smoking initiation
- 14 likelihood?
- 15 A. I indicated it was a factor.
- 16 Q. How significant a factor? Can you put it on a par
- 17 with anything else?
- 18 A. It's hard to compare it with other things, because
- 19 socioeconomic status is a marker for all kinds of other
- 20 exposures. If you are poor or if you are blue collar,
- 21 you have much more smoking in your environment, you
- 22 have much more advertising that you are exposed to in
- 23 your community, you have much more likelihood of having
- 24 friends that smoke. So it is associated with all those
- 25 individual factors. Take a community like - well, you

PAGE 138

138

- 1 kind?
- 2 A. Well, in California, during the period of this
- 3 study, there has been a tremendous amount of
- 4 counteradvertising and countereducation that has taken
- 5 place, because of tobacco tax money that was put into
- 6 counteradvertising.
- 7 Q. Yes?
- 8 A. But I don't know -
- 9 Q. Was that true in '83?
- 10 A. Yes, it was true throughout '83 to '86. I don't
- 11 know if he measured the extent to which these
- 12 particular children, individually, were exposed to
- 13 these campaigns.
- 14 Q. How transferable do you think the results of a
- 15 California study are to Vermont?
- 16 A. Well, I know a little bit about the difference
- 17 between our population exposure to tobacco promotions
- 18 and the California population. I think the kids -
- 19 Q. Kids are kids?
- 20 A. Whether they are in Vermont or California, as I
- 21 don't think the individual characteristics of the kids
- 22 are that different. The prevalence of the ownership of
- 23 promotional items of this population in 1983 was
- 24 something like 10 percent.
- 25 Q. Significantly less than what you found?

PAGE 139

139

- 1 know, take an affluent community in Burlington, like
- 2 Shelburne. Is Shelburne an affluent community?
- 3 Q. It is an affluent community, but it is not in
- 4 Burlington. South of Burlington.
- 5 A. One of those bedroom communities south of
- 6 Burlington. If you live in one of those communities,
- 7 you live in a completely different environment than
- 8 somebody that lives just north of the city center, who
- 9 lives in a real blue-collar community. So not only is
- 10 your socioeconomic status different, but your exposure
- 11 to all the environmental factors that are linked with
- 12 smoking is really different.
- 13 Q. In Pierce's study, there was no adjustment, except
- 14 for an indirect adjustment, for race and ethnicity or
- 15 socioeconomic status?
- 16 A. Correct.
- 17 Q. Did he adjust for poor group smoking in this?
- 18 A. That is, friends smoking.
- 19 Q. Friends?
- 20 A. Yes.
- 21 Q. Okay. Did he do any adjustments for participating
- 22 in some sort of educational program?
- 23 A. No.
- 24 Q. Do you know whether any of these people in this
- 25 study participated in an educational program of any

PAGE 140

140

- 1 A. Much less than our population. So I think there
- 2 is a chance that the effect - because they're so much
- 3 more prevalent in our population, that there is a much
- 4 bigger effect in our population.
- 5 Q. How are promotional items distributed? I know
- 6 there is that catalog from Camel, but -
- 7 A. They're distributed a number of ways. The most
- 8 common way that they are distributed is, somebody
- 9 acquires a catalog, and either purchases them from the
- 10 catalog for money or for value added coupons, Marlboro
- 11 Mills in the case of Marlboro, and Camel Cash in the
- 12 case of Camel, if you want to take, as an example, the
- 13 biggest promotional campaigns. But the other way they
- 14 are given out are through vendors, with packages of
- 15 cigarettes that are sold, or as part of displays. They
- 16 are also given out at sporting events, such as race
- 17 car - race tracks are a real common place where they
- 18 are given away.
- 19 Q. Like auto race tracks, you mean?
- 20 A. Yes.
- 21 Q. Thunder Road?
- 22 A. Yes. But even ice fishing. We had somebody bring
- 23 us a point-and-shoot disposable camera that looked like
- 24 a Marlboro pack, that was given to them at an ice
- 25 fishing contest. So they are given away in a number of

2065019995

PAGE 141 SHEET 36

141

1 venues in a number of ways. The most common way is, as  
 2 I said, these value-added coupons.  
 3 Q. That is a coupon that you get with the cigarette  
 4 pack?  
 5 A. Yes.  
 6 Q. You said, sometimes they were on tear-off sheets  
 7 at a store, where kids, or anybody, can just go in - I  
 8 suppose it is supposed to be adults - and they have  
 9 like a pen, and you can rip off as many coupons as you  
 10 want?  
 11 A. No. No. You have to get the coupons from the  
 12 cigarette packs. But stores give away things like  
 13 lighters, ashtrays, and things, from time to time. It  
 14 is not everyday you can go into a store and get these  
 15 kinds of things.  
 16 Q. You don't think kids start to smoke because a  
 17 convenience store gives them a lighter, do you?  
 18 A. I think kids start to smoke because they acquire  
 19 the items, and I know that one of the ways they acquire  
 20 the items is to acquire them through convenience  
 21 stores.  
 22 Q. Are the items you are referring to things like  
 23 cigarette lighters?  
 24 A. Yes, cigarette lighters, ashtrays, caps. Things  
 25 like that.

PAGE 142

142

1 nothing about advertising?  
 2 A. Yes. These children. These are the children to  
 3 whom these children are compared.  
 4 Q. And did they become more aware of advertising as  
 5 time went on?  
 6 A. This article doesn't address that, and I can't  
 7 answer it from these data. What I can say is, those at  
 8 baseline in 1983, who really had no evidence that they  
 9 had any receptivity to advertising, about 40 percent of  
 10 the time went on to kind of move along in their  
 11 progression toward smoking, whereas if they owned an  
 12 item, 62 percent went on to progress.  
 13 Q. So, the minimal group had no favorite brand, not  
 14 willing to own promotional materials -  
 15 A. Don't own promotional materials, and can't even  
 16 identify a brand associated with an ad.  
 17 Q. Of that group, 37 percent progressed somewhat  
 18 farther; may not have smoked, but they progressed  
 19 somewhat farther?  
 20 A. Yes. Now, that suggests that, you know,  
 21 advertising is not the only thing, there are other  
 22 factors.  
 23 Q. And, by progressing, it may mean they just learned  
 24 a brand or had a favorite ad?  
 25 A. No, it means they - by "progressing," it means

PAGE 142

142

1 Q. So let me understand. Are you suggesting that  
 2 getting the lighter or getting the ashtray leads one to  
 3 smoke, as opposed to being the result of just wanting  
 4 to acquire the items, or already smoking and needing  
 5 the items?  
 6 A. Yes. That acquiring the items often precedes  
 7 smoking, in kids. You can get that from our study.  
 8 When you look at our study across grade, maybe 2  
 9 percent of sixth graders are regular smokers, and maybe  
 10 20 percent of twelfth graders are regular smokers. But  
 11 ownership of the items is pretty much about 33 percent,  
 12 all the way across grades. So, clearly, even though  
 13 smoking is much less prevalent amongst sixth graders,  
 14 ownership of the items is as prevalent in sixth graders  
 15 as it is in twelfth graders, who have a much higher  
 16 smoking prevalence.  
 17 Q. And you are suggesting that, or you are stating  
 18 that Pierce's study proves that ownership of the  
 19 promotional items causes smoking?  
 20 A. This study proves that children who own these  
 21 items are almost three times more likely to progress to  
 22 smoking, after controlling for all of these other  
 23 factors, compared with children who not only don't own  
 24 the items but can't identify a brand or advertisement.  
 25 Q. Did they do any following of children who knew,

PAGE 144

144

1 that they either were no longer able to say, "I  
 2 definitely am not going to smoke in the future," or  
 3 they were experimenting with cigarettes. That is, they  
 4 smoked between 1 and 99, or they became a regular  
 5 smoker - that is, they smoked more than 100.  
 6 Q. Isn't that true of children, generally, as they  
 7 develop, that they become less absolutist about things?  
 8 A. I don't know what you mean.  
 9 Q. When you speak to small children, often, the world  
 10 is very black and white: Do this, don't do that. It  
 11 is: I will do something or I won't. But as people  
 12 get older, they begin to consider more alternatives.  
 13 Isn't that part of the natural progression?  
 14 A. Well, as they progress through adolescence,  
 15 children do develop attitudes that are - a lot of  
 16 children develop attitudes that are more receptive of  
 17 smoking. Is that because they are maturing? I don't  
 18 know. I mean, it ends sometime, because, at some  
 19 point, people who haven't smoked aren't very likely to  
 20 pick up smoking at all. No amount of advertising or  
 21 friends smoking could cause me to pick up smoking. So,  
 22 I think, once you get to a certain phase of maturity,  
 23 you are much less influenced by things like advertising  
 24 or your friends smoking or whatnot.  
 25 Q. Do you know, have there been any studies on other

2065019996

PAGE 145 SHEET 37

145

1 products, similar to tobacco, that deal with the effect  
2 of advertising a product on small children?  
3 A. My guess is there have been, but I don't know.  
4 Q. But you don't know of any?  
5 A. Yeah. My - I mean, a perfect example, I think,  
6 of how receptive children are to advertising is an  
7 example that I have heard time and time again in the  
8 office, talking to parents with small children. And  
9 that is, a month or two months before Christmas, what  
10 happens is, all the new toys come out, and they are  
11 heavily marketed and advertised on daytime TV,  
12 especially Saturday morning TV. And if you ask the  
13 kids that watch Saturday morning TV what is on their  
14 list for Santa Claus, it very often includes one of  
15 those items.  
16 Q. But not all?  
17 A. No, not all. But I have seen my kids flip, and  
18 absolutely just tell me they won't have anything else  
19 but - when they were young, you know: I won't have  
20 anything else but what was on that TV. And what  
21 happens is, if you get them when they're six, seven,  
22 eight years old, they are still very much in the phase  
23 of being very receptive and believing everything.  
24 These are kids that are still kind of believing in  
25 Santa Claus. So, whatever they see, they believe.

PAGE 147

147

1 Q. Would these kinds of ads, standing alone, that are  
2 depicted in Exhibit 4 - the Winston, the Camel, and -  
3 what is it? - the Natural - alone, that type of ad,  
4 would they induce kids to smoke?  
5 MS. OSKI: I object. That question has  
6 been asked and answered about three times.  
7 Q. I am asking it again.  
8 A. No.  
9 Q. It would not. So it is by association with the  
10 magazines?  
11 A. Yeah, it is by association with very visual images  
12 that are portrayed in other domains. It is by putting  
13 promotional items out. Because it is not - you know,  
14 storefront advertising is not just limited to these  
15 signs. And it is by creating the impression, among  
16 children who shop at convenience stores, that tobacco  
17 is very prevalent stuff, that is out there, and most  
18 people use it.  
19 Q. What is the most effective form of tobacco  
20 advertising that you are aware of, if you have an  
21 opinion?  
22 A. What is, what would be, what has been?  
23 Q. What is?  
24 A. I think, if I had to choose what would be the  
25 most, or could be the most effective, probably I would

PAGE 146

146

1 They don't really critically evaluate stuff. It just  
2 kind of comes in like a sponge.  
3 My daughter, when she was five, saw Barbie dances  
4 on a stage, and she thought Barbie really dances on  
5 stage, and the lights are really blinking. And on her  
6 Christmas list, she only wanted Barbie, which she had  
7 for about a half-hour, because, when she found out the  
8 lights don't really blink, she didn't want anything to  
9 do with it anymore.  
10 Q. Isn't that kind of advertisement qualitatively  
11 different from the Winston sticker on the window,  
12 though?  
13 A. It is different from that Winston sticker that you  
14 are showing me, yes, because it is very image-laden.  
15 But it is not -  
16 Q. What is very image laden?  
17 A. The Saturday morning TV, with GI Joe running  
18 around and shooting, and things like that. It is not a  
19 whole lot different from the advertising that you see  
20 in magazines. And what I am suggesting is that, in  
21 older children, who read Sports Illustrated, who get a  
22 big, heavy dose of the pictures through their reading  
23 material, that this just reinforces the kinds of images  
24 that are brought to mind, that they have retained from  
25 magazine advertising.

PAGE 148

148

1 say television.  
2 Q. Television no longer serves as a vehicle for the  
3 promotion of a particular brand, though?  
4 A. Right. It has been eliminated. Direct  
5 advertising has been eliminated on television.  
6 Q. Of the advertising that is available to cigarette  
7 manufacturers, and is utilized by them, do you have an  
8 opinion as to what is the most effective?  
9 A. The promotional campaigns. The articles of  
10 clothing. The book bags that kids bring to school.  
11 All that stuff. The camping gear. The things that  
12 really create a smoking persona that kind of walks  
13 around, walking advertising.  
14 Q. What would you consider to be the second most  
15 effective?  
16 A. The heavily - the heavy visual images. Big, you  
17 know, visual images of people smoking, whether it is in  
18 a storefront or in a magazine. But the stationary -  
19 or a billboard, stationary photos of people smoking.  
20 (Deposition Exhibit 20, Archives of Diseases of  
21 Pediatrics and Adolescent Medicine, April 1998, was  
22 marked)  
23 Q. Doctor I show you what is marked as Deposition  
24 Exhibit 20. Can you identify that for me?  
25 A. The cover of Archives of Diseases of Pediatrics

2065019997

PAGE 149 SHEET 3B

149

- 1 and Adolescent Medicine.  
2 Q. Attached to that, there is an article that  
3 purports to be by you.  
4 A. Yes.  
5 Q. And then --  
6 A. It is not from -- it is not from this issue.  
7 Q. Wrong cover page?  
8 A. Wrong cover page. This is from the December  
9 issue, and the cover page is from the November issue.  
10 Q. Doctor, were there any errors in this article that  
11 you know of?  
12 A. There were.  
13 Q. What were those errors?  
14 A. There was one error. It was a misstatement about  
15 the increase of expenditures for the advertising and  
16 promotion of cigarettes. And that was corrected in  
17 another -- in a letter to the editor, which I can  
18 provide for you, if you don't have it.  
19 Q. I have actually got it.  
20 (Deposition Exhibit 21, Dr. Serpent's letter to  
21 Archives of Diseases of Pediatrics and Adolescent  
22 Medicine, was marked)  
23 Q. I show you what is marked as Exhibit 21. Is that  
24 the letter that you were referring to?  
25 A. Yes.

PAGE 150

150

- 1 Q. And was the error that expenditures were  
2 overstated?  
3 A. Expenditures were understated in 1990. The FTC  
4 reports tobacco expenditures, and what you have to do  
5 to get a feel for how much is spent for cigarette  
6 promotional items is to add specialty item distribution  
7 with coupons and retail value added. And, in 1990,  
8 only specialty item distribution was included in this  
9 article. And the combined figures were given for 1994.  
10 So this article overstated the increase in expenditures  
11 for promotional items.  
12 Q. Is this the same article that is referred to in  
13 your CV? I don't know if you have that.  
14 A. Yes. Well, it is one of the articles that is  
15 referred to in my CV.  
16 Q. Is this --  
17 A. This one.  
18 Q. Number 3, tobacco promotional items?  
19 A. Yes.  
20 Q. You might want to correct your CV in the future.  
21 A. Yes.  
22 Q. As I understand it, this is a cross-sectional  
23 study, and, therefore, you can't infer any causal  
24 relationship between promotional item ownership and  
25 smoking; is that true?

PAGE 151

151

- 1 A. It is consistent with all the other studies, which  
2 is, you know, it is the -- as I said, the combined --  
3 if you look at all the studies, they all say the same  
4 thing, that there is an association between promotional  
5 activities and smoking. So it is one aspect of the  
6 causal argument. You cannot infer directionality from  
7 this cross-sectional study.  
8 Q. And, without directionality, you cannot infer  
9 causation?  
10 A. Correct.  
11 Q. Are there any questions concerning the ability of  
12 longitudinal studies to predict causation?  
13 A. Yeah. I mean, the same kinds of questions.  
14 Questions of confounding, for instance.  
15 Q. Yes?  
16 A. You know, is the longitudinal study actually  
17 picking up a cigarette promotional item effect, or is  
18 it some other factor that either wasn't measured or  
19 wasn't adequately measured.  
20 Q. Do you believe those potential problems have been  
21 adjusted for in the studies that you have been  
22 referring to?  
23 A. What you are usually talking about in that kind of  
24 a situation is either measurement error -- that is, you  
25 didn't adequately measure all those factors -- or there

PAGE 152

152

- 1 is a missing factor somewhere. And that is why we  
2 always require there to be multiple studies that show  
3 the same thing, all of which have a little bit of  
4 measurement error, and all the measurement error is a  
5 little bit different. If they all show the same thing,  
6 what you have is a strong association. If it works in  
7 a certain direction in the longitudinal studies, then  
8 it is the preponderance of the evidence that indicates  
9 causation.  
10 (Deposition Exhibit 22, April 1998 "Archives of  
11 Pediatrics," "Cognitive Susceptibility to Smoking and  
12 Initiation of Smoking During Childhood, a Longitudinal  
13 Study," by Christine Jackson, was marked)  
14 Q. I show you what is marked as Exhibit 22. It  
15 appears that the cover page on this is correct. I ask  
16 you to take a look at that and ask if you can identify  
17 it.  
18 A. Yes.  
19 Q. That is an article by you?  
20 A. Yes.  
21 Q. Does that article have any bearing on what we are  
22 talking about in terms of ads inducing children to  
23 smoke?  
24 A. No.  
25 MR. LEDDY: Can you identify 22, with

2065019998

PAGE 153 SHEET 38

153

1 the name of the article?  
2 A. I'm sorry. "Predictors of Smoking Cessation in  
3 Adolescents." I am the lead author. It is published  
4 in Archives of Pediatrics and Adolescent Medicine in  
5 April 1998. This article more has to do with what  
6 induces adolescents to quit smoking, and shows that  
7 the more cigarettes they smoke, the more addicted they  
8 are, the less likely they are to quit.  
9 (Deposition Exhibit 23, article by Christine  
10 Jackson from Preventative Medicine, 1998, was marked)  
11 Q. I am going to show you Exhibit 23 and ask you if  
12 you can identify that.  
13 A. Yes. That is a recent article by Christine  
14 Jackson.  
15 Q. And you reference that in your expert disclosure  
16 affidavit?  
17 MS. OSKI: What journal is that from?  
18 THE WITNESS: Preventative Medicine,  
19 1998.  
20 Q. What proposition do you believe that this article  
21 stands for?  
22 A. This is an article that just shows that children  
23 who are - who have the - who are susceptible to  
24 smoking - that is, children who are not able to say  
25 "definitely not" to those questions we talked about -

PAGE 155

155

1 young children, to study the smoking uptake process.  
2 Q. And the marker would be susceptibility?  
3 A. Yes. When she says 'cognitive susceptibility,' it  
4 is a cognition in young children, it is an attitude  
5 that precedes the onset of smoking, and it is an  
6 attitude - because it precedes the onset of smoking.  
7 It becomes prevalent in younger children.  
8 Q. Does that article draw any connection between  
9 susceptibility and promotional items?  
10 A. Which article?  
11 Q. The Jackson one, 23.  
12 A. You know, I didn't review that one for this, so I  
13 need to look at it.  
14 Q. Please.  
15 (Pause)  
16 A. No.  
17 Q. Did it draw any connection between advertising  
18 and -  
19 A. No.  
20 Q. Before we were talking about promotional items,  
21 and it is my understanding that one is required to  
22 certify that one is more than 21 years old to acquire  
23 those promotional items, or more than 18?  
24 A. In order to order them from a catalog, one has to  
25 state they were over 21.

PAGE 154

154

1 Q. Right.  
2 A. - are more likely, in a prospective study, in a  
3 longitudinal study, to smoke. So we take kids who have  
4 never smoked, really young kids. If they can't  
5 definitely rule out smoking in the future, they are  
6 more likely to smoke. So it validates that  
7 susceptibility notion in a sample of young children.  
8 There is another article in which Pierce validates it  
9 in older children.  
10 Q. In what sense is that significant? I mean, that  
11 hardly seems earth-shattering to me, that children who  
12 are more susceptible are more likely to do something.  
13 A. It is really helpful to us, as researchers,  
14 because, you see, what we have been stuck with before  
15 is measuring actual smoking as our kind of outcome.  
16 Q. Yes?  
17 A. And it has kept us from being able to work on very  
18 young children, children who we think are really taking  
19 up messages about smoking in their schools,  
20 communities, and elsewhere. If we have a marker that  
21 we can focus on that - you see, we can't focus in on  
22 that in young children, because hardly any real young  
23 children have ever smoked. So what you want to do is  
24 to focus on a marker that is more prevalent in young  
25 children, and this gives us a marker to focus on in

PAGE 156

156

1 Q. Does one also have to indicate a credit card  
2 number to charge it?  
3 A. You can send a check.  
4 Q. Money order?  
5 A. I don't think they will accept cash, but they will  
6 accept check or money order.  
7 Q. How do these kids get the promotional items? I  
8 don't know many 17-year-olds that have a checking  
9 account.  
10 A. The children that I surveyed, 17 percent said they  
11 acquired them themselves, 5 percent acquired them  
12 through vendors, a substantial minority acquired them  
13 through parents and friends and family members. So you  
14 have these items coming into the household, and the  
15 kids acquire them that way.  
16 Q. Now, is it 5 percent of the kids who had them  
17 acquired them directly, or 5 percent of the total kids  
18 acquired them directly?  
19 A. Let me just give you the exact figures on that,  
20 since the article is right here. Okay. The highest  
21 category was "Acquired them from parents," 30.9  
22 percent.  
23 Q. That would be 30.9 percent of the kids who had  
24 them, not 30.9 percent of the total population?  
25 A. Correct.

2065019999

PAGE 157 SHEET 40

157

- 1 Q. Okay.
- 2 A. The next highest category is "Obtained it
- 3 themselves from a catalog," 17 percent. The next
- 4 highest category is "Obtained them from a friend," 16.8
- 5 percent. And the next highest category is "Another
- 6 adult," 16.6 percent. And the next is "Sibling," 8.9
- 7 percent, or 6.9 percent. The next is "From a store,"
- 8 5.4 percent. And then we gave them another category,
- 9 in case they acquired it somewhere besides those other
- 10 categories, we gave them, and some checked, "Other."
- 11 Q. Have you ever reviewed any articles or studies
- 12 indicating there was no connection between advertising
- 13 and smoking?
- 14 A. I have seen comments on articles that say there
- 15 is -- that this article doesn't show that there is a
- 16 link between advertising and smoking. I haven't seen
- 17 articles that have actually looked for a link between
- 18 advertising and smoking in children and not found one.
- 19 Q. Have you ever looked at any articles by
- 20 Mr. Zinser?
- 21 A. I have never heard of Mr. Zinser.
- 22 Q. Why about Colin MacDonald, International Journal
- 23 of Advertising? Does that ring a bell?
- 24 A. No.
- 25 Q. Jean Boddewijn?

PAGE 158

158

- 1 A. Yes. That is -- Boddewijn is mainly the one that I
- 2 have read.
- 3 Q. When was the last time you looked at it?
- 4 A. I actually came across one of Boddewijn's articles
- 5 this weekend, as I was looking through my articles,
- 6 because there is one in there.
- 7 Q. The article you came across, would that be,
- 8 "Cigarette Advertising Bars and Smoking: A Flawed
- 9 Policy Connection"?
- 10 A. No, I have never seen that one.
- 11 Q. Do you happen to remember the title of the one you
- 12 came across?
- 13 A. Do you want me to get it?
- 14 Q. Sure.
- 15 (Records)
- 16 A. I can't find it.
- 17 Q. Do you have any ideas as to what the date of it
- 18 was, or any information about it at all?
- 19 A. No. It was in response to a study that appeared
- 20 in "Addiction" about the relationship between, I think,
- 21 advertising and sales in New Zealand, and it was within
- 22 the last ten years. That's the best I can do.
- 23 Q. Have you read any articles by Stewart?
- 24 A. No.
- 25 Q. Have you ever read any articles that you remember

PAGE 159

159

- 1 by someone named Henke, "Young Children's
- 2 Interpretation of Cigarette Brand Advertising:
- 3 Symbols, Awareness, Effect and Target Market
- 4 Identification"?
- 5 A. No.
- 6 MS. OSKI: What journal is that in?
- 7 MR. BROW: Journal of Advertising.
- 8 Q. Have you ever heard of Ron Faber?
- 9 A. Before this case? Before they told me you that
- 10 you were --
- 11 Q. Yes.
- 12 A. No.
- 13 Q. Before they told you I was friends with him.
- 14 A. Before they told me he was going to be your
- 15 expert, no.
- 16 Q. Okay.
- 17 A. He has probably never heard of me.
- 18 Q. Have you ever heard of the Rockwoods?
- 19 A. The what?
- 20 Q. The Rockwoods. They're my clients.
- 21 A. No.
- 22 Q. One question about the Pierce article. He was
- 23 dealing with California. Do you know whether, in
- 24 California, they allow billboards?
- 25 A. (Witness nodded).

PAGE 160

160

- 1 Q. They do?
- 2 A. They do.
- 3 Q. Do you have any impression as to whether
- 4 billboards are an effective way of advertising?
- 5 A. They're one way to put out an image that includes
- 6 people smoking, so they're an effective way of
- 7 communicating an association between smoking and a
- 8 certain persona.
- 9 Q. They're more effective than just say, the
- 10 Marlboro or the Winston sign, that is just red and
- 11 white and has a name on it?
- 12 A. Right. But I have already said, anything with a
- 13 picture --
- 14 Q. Would be better?
- 15 A. Yes.
- 16 MR. BROW: All right, I am done.
- 17 MR. LEDDY: Thank you, Doctor.
- 18 THE WITNESS: Thank you.
- 19
- 20 (The deposition of JAMES SARGENT was concluded at
- 21 2:00 on July 12, 1998.)
- 22
- 23
- 24
- 25

2065020000



PAGE 101 SHEET 41

101

1 NOTARIZATION OF SIGNATURE

2 I have carefully read the foregoing deposition and  
3 the answers made by me are true.

4

5

6

7

JAMES SARGENT

8

9 STATE OF VERMONT

10 COUNTY OF \_\_\_\_\_

11

12 At \_\_\_\_\_ in said County and

13 State this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

14 personally appeared the above-named JAMES SARGENT, and

15 made oath that the foregoing answers subscribed by

16 him, are true.

17

18

Before me,

19

20

Notary Public

21

22

23

24

25

PAGE 102

102

1 C-E-R-T-I-F-I-C-A-T-E

2

3 I, Kenneth McClure, Certified Shorthand Reporter

4 and Notary Public, do hereby certify that the foregoing

5 pages are a true and accurate transcription of the

6 deposition of JAMES SARGENT, taken before me on July

7 13, 1998, at the Dartmouth-Hitchcock Medical Center in

8 Lebanon, New Hampshire, and transcribed by me for use

9 in the matter of Rockwood v. City of Burlington, now

10 pending in United States District Court for the

11 District of Vermont.

12

13 DATED this 14th day of July, 1998 at Montpelier,

14 Vermont.

15

16

17

18

Kenneth McClure, RPR, RMR

19

20

21

22

23

24

25

2065020001